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Sup. Ct.

## TRANSCRIPT OF RECORD

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Supreme Court of the United States

OCTOBER TERM, 1945

No. 52

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BETTER BUSINESS BUREAU OF WASHINGTON,  
D. C., INC., PETITIONER,

vs.

THE UNITED STATES OF AMERICA

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE DISTRICT OF COLUMBIA

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PETITION FOR CERTIORARI FILED MARCH 29, 1946.

CERTIORARI GRANTED APRIL 30, 1946.

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

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BETTER BUSINESS BUREAU OF WASHINGTON,  
D. C., INC., PETITIONER,

vs.

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APPEALS FOR THE DISTRICT OF COLUMBIA

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[fol. 1]

[Caption omitted]

[fol. 2]

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF COLUMBIA**

Civil Action No. 17271

**BETTER BUSINESS BUREAU OF WASHINGTON, D. C., INC., Even-  
ing Star Building, Plaintiff,**

v.

**THE UNITED STATES, Defendant**

COMPLAINT—Filed September 30, 1942

For the Refund of Social Security Taxes

The Petition of the Better Business Bureau of Wash-  
ington, D. C. Inc. respectfully represents:

## I

That it is a corporation organized on the 10th day of August, 1920, under the corporate laws of the District of Columbia, Act of March 3, 1901, 31 Stat. Ch. 854, par. 599; Ch. 6, p. 834 D. C. Code (1940), and has existed continuously since the aforesaid date of organization and still continues to operate under said laws, reference being hereby made to its charter and amendments thereto filed in the office of the Recorder of Deeds of the District of Columbia as required by law, numbers 15823, 15846, 17644, and 25146, which are prayed to be considered a part of this Petition.

## II

That this Court has jurisdiction by virtue of the fact that the controversy arises under the revenue laws of the United States of America and that this Court is given jurisdiction over such controversies by the acts of Congress and specifically by 28 USCA c. 2, Sec. 41 (5) Sec. 563; par. 5; Section 629, par. 4, March 3, 1911, c. 231, Sec. 24 par. 5, 36 Stat. 1092, etc.

[fol. 3]

## III

That this Plaintiff is incorporated as an educational, scientific and civic corporation under the above mentioned Act of Congress (Paragraph I); that the purpose or purposes for which it was chartered as disclosed by the Articles of Incorporation on file in the office of the Recorder of Deeds of the District of Columbia are as follows:

"That the corporate name of the organization shall be the "Better Business Bureau of the District of Columbia" and the object for which it is formed is for the mutual welfare, protection and improvement of business methods among merchants and other persons engaged in any and all business or professions and occupations of every description whatsoever that deal directly or indirectly with the public at large, and for the educational and scientific advancements of business methods among persons, corporations or associations engaged in business in the District of Columbia so that the public can obtain a proper, clean, honest and fair treatment in its dealings or transactions with such merchants, tradesmen, corporations, associations or persons following a profession and at the same time protecting the interest of the latter classes of businesses to enable such as are engaged in the same to successfully and profitably conduct their business and for the further purpose of endeavoring to obtain the proper, just, fair and effective enforcement of the Act of Congress approved May 29th, 1916, otherwise known as "An Act to prevent fraudulent advertising in the District of Columbia."

under which this Plaintiff has continuously since its organization confined its operations.

## IV

The Plaintiff operates as an educational, scientific and civic organization, and is supported by voluntary subscriptions only, the amounts of the same varying according to the assent of the subscriber, and this organization is conducted without any profit to any individual or corporate member thereof, it having no capital stock, and the only salaries paid by it are those paid to its Director who is the General Manager, and those employed under him to carry out the work created by the powers contained in its

aforesaid charter and by-laws formulated thereunder, all officers and directors of this Plaintiff corporation serving voluntarily and without any compensation.

### V

That the Plaintiff furnishes information to members and non-members of the corporation without discrimination and charges no fee to any one; that it has attempted to educate and inform merchants, manufacturers, bankers and consumers as to honest, fair and legitimate advertising and business methods, and to protect the consumer from fraud, misrepresentation or other injustice and has by every means within its power attempted to discourage unfair competition and unfair dealings with the public.

### VI

That this Plaintiff is exempt from the payment of taxation on its income under the Income Tax Laws of the District of Columbia and the United States on the ground:

"That it is a corporation organized and operated exclusively for scientific, educational and civic purposes, and no part of its net earnings inures to the benefit of any private shareholder or individual, and it being a non-profit organization, operating by voluntary subscriptions." (Act of July 26, 1939, 53 Stat. 1087, Ch. 367, Title 2, par. 2; July 2, 1940, 50 Stat. 734, Ch. 524, Title 2; and Section 101 (7) of the Federal Income Tax Act of 1938; Ch. 1 Internal Revenue Code, approved February 10, 1939, respectively).

[fol. 5]

### VII

That the Federal Social Security Act approved August 14, 1935, and amendments thereto, contains what is commonly referred to as Title VIII, being Chap. 531, Title VIII, Sections 801 to 811, inclusive, 49 Stat. 636 to 639; that said act imposes upon the employer a tax of one per cent of the wages paid to employees, by such employer during the years of 1937, 1938, 1939, 1940 and 1941, and imposes a tax of one per cent during the aforesaid years upon the wages received by employees; that said tax is limited, however, to the first \$3,000.00 paid to, or received by an employee during the calendar year, and provides that the employer shall deduct from the employees' wages the taxes imposed upon the employees, and that the employer shall



4  
remit with the taxes imposed upon him, or it, the amount so deducted as a tax upon his employees' wages.

### VIII

That the Commissioner of Internal Revenue (through the Collector of Internal Revenue at Baltimore, Maryland), acting for and on behalf of the United States, and assuming to act as such and under the provisions of the aforesaid Act, arbitrarily assessed and collected from this Plaintiff corporation such sums of money for the purposes of the aforesaid Act upon the theory that this Plaintiff was subject to the requirements and provisions of the same, which payment of monies is otherwise commonly known as "the Social Security Tax," and which were as follows:

Social Security Taxes assessed and collected for the

Calendar Year of 1937	\$209.01
" " " 1938	294.91
" " " 1939	274.08
" " " 1940	255.56
" " " 1941	292.98
Total	\$1326.54

[fol. 6] That in order to avoid penalties and other punishment for non-compliance of such demands for the above mentioned Social Security Taxes, this Plaintiff did make the above mentioned payments as hereinbefore stated to the Commissioner of Internal Revenue, (through the Collector of Internal Revenue, Baltimore, Maryland), aforesaid, as required by it and on the dates and in the amounts prescribed by it, all of which monies were turned in to the United States Treasury in due course by the said Defendant, and now remain therein, as shown by the records of the Commissioner of Internal Revenue, Treasury Department, hereby referred to and prayed to be considered a part of this Petition, consisting of the assessment returns, records of payment and receipts of the Collector of Internal Revenue.

### IX

That on or about January 25, 1941 and February 7, 1942 the Plaintiff duly filed with the Commissioner of Internal Revenue claims for refund for the aforesaid Social Security

Taxes in the sum of \$1,033.56 and \$292.98, totaling the sum of \$1,326.54, as provided by Sections 3220 and 3228 of the U. S. Revised Statutes, and Section 1422 of Ch. 9, sub-ch. A of the Social Security Act as amended, on Form No. 843 prescribed by the regulations of the Bureau of Internal Revenue for this purpose covering the calendar years from January 1, 1937 to December 31, 1940 and for the calendar year of 1941, claiming the refund of the aforesaid Social Security Taxes on the ground that they were erroneous and illegal, as this Plaintiff corporation was and is being conducted as an educational, scientific and civic corporation and therefore exempt from taxation under Sec. 1011, Title 42, USCA, Title VIII, Sec. 811, 49 Stat. 639, hereinbefore set out, for the reason that it was a corporation whose activities were confined to educational, scientific and civic purposes and solely derived its income from voluntary subscriptions or contributions used to defray its necessary [for] operating expenses, and no part thereof inuring to the benefit of any private individual or shareholder.

Said applications were on proper form of the office of the Commissioner of Internal Revenue of the Treasury Department, as required, and were in all respects complete, regular and in accordance with the laws and regulations and were accompanied by the necessary evidence and proof of facts. The facts alleged in said applications were not traversed or denied by the Commissioner of Internal Revenue or by any representative of the United States. Although said applications were in all respects complete and in due form, nevertheless the Commissioner of Internal Revenue refused and denied said applications on July 3, 1941 and June 26, 1942, respectively, on the following ground:

"The records of the Bureau indicate that your organization has been granted exemption from Federal income tax under the provisions of Section 101(7) of the Revenue Act of 1936 and the corresponding provisions of prior revenue acts applying to business leagues, chambers of commerce, real-estate boards, or boards of trade, not organized for profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual. The provisions of Section 101(7) of the Revenue Act of 1936 and the corresponding provisions of prior revenue acts are similar to the provisions of Section 101(7) of the

Internal Revenue Code. The exempt status so established under income tax laws does not extend to the taxes imposed under Title VIII of the Social Security Act or the Federal Insurance Contributions Act. There is no provision in such acts under which your organization is entitled, by reason of its character or purposes, to exemption from the taxes imposed thereby."

[fol. 8] as shown by the records of the Commissioner of Internal Revenue, and is hereby referred to and prayed to be considered a part hereof.

### X

That this civil action is brought by the Plaintiff in its behalf and in behalf of Claude H. Woodward and other employees of the Plaintiff who have been required to contribute the payment of such tax; that as and if judgment is rendered in its favor, it will return to its employees the amount of tax it has collected from them in order to comply with the demands of the Defendant.

### XI

Your Plaintiff is advised by its counsel, and therefore avers, that the Social Security taxes collected from it are erroneous and illegal, which reasons were urged at the time of the filing of the claims for refund in the Treasury Department, and which reasons are urged here, and are set out in the preceeding paragraph.

### XII

No action upon this claim other than herein set forth has been taken before Congress or any other Department of the Government.

### XIII

The plaintiff avers that there is justly due and owing to it on account of matters herein set forth the sum of \$1,326.54, after deducting all just off-sets and demands on part of the United States, and that it is the sole owner of the claim herein sued upon, and no assignment or transfer of the claim or any part hereof or interest in the same has been made.

Wherefore, the plaintiff prays findings of fact and judgment for the sum of \$1,326.54, with interest from the date [fol. 9] of the respective payments of the aforesaid Social Security Taxes as provided by law, and for such other relief to which it may be entitled.

Better Business Bureau of Washington, D. C., Inc.  
By: Edward C. Baltz, President.

Attest: Claude H. Woodward, Secretary. Lyon &  
Lyon, Attorneys for Plaintiff, 701 Evans Building,  
Washington, D. C.

*Duly sworn to by Edward C. Baltz. Jurat omitted in printing.*

[fol. 10] IN UNITED STATES DISTRICT COURT

ANSWER—Filed December 14, 1942

Now comes the defendant, the United States of America, by its attorney, Edward M. Curran, United States Attorney in and for the District of Columbia, and for its answer to the complaint filed herein:

1. Admits the allegations contained in paragraph numbered I thereof.

2. Admits the allegations contained in paragraph numbered II thereof.

3. Answering paragraph numbered III of the complaint, the defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies said allegations.

4. Answering paragraph numbered IV of the complaint, the defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies said allegations.

5. Answering paragraph numbered V of the complaint, the defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies said allegations.



6. Denies the allegations contained in paragraph numbered VI of the complaint.

7. Admits the allegations in paragraph numbered VII of the complaint, except that the defendant alleges that for the years 1940 and 1941, respectively, the Federal Social Security Act and amendments thereto referred to in said paragraph imposed upon each the employer and the employees, respectively, a tax of one and one-half per cent of the wages paid to and received by said employees, instead of one per cent of said wages as alleged therein.

[fol. 11] 8. Admits the allegations in paragraph numbered VIII of the complaint, except that the defendant denies that the social security taxes referred to in said paragraph were arbitrarily assessed and collected from plaintiff, as alleged therein. Further answering said paragraph, the defendant alleges that the correct amount of said taxes assessed against and collected from plaintiff for the years 1937 to 1941, inclusive, was in the aggregate sum of \$1,379.02, instead of \$1,326.54, as alleged therein, which amount was paid by plaintiff as social security taxes during said period.

9. Answering paragraph numbered IX of the complaint, the defendant admits that plaintiff filed two claims for refund for the recovery of aforesaid social security taxes in the total sum of \$1,326.54 on the ground that it was exempt from federal taxes, and admits that said claims for refund were disallowed by the Commissioner of Internal Revenue, as alleged therein. Further answering said paragraph, the defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of each and every other allegation of fact contained therein, and therefore denies said allegations.

10. Admits the allegations contained in paragraph numbered X of the complaint, except that the defendant denies that this action is brought in behalf of Claude H. Woodward and other employees of plaintiff, as alleged therein. Further answering said paragraph, the defendant alleges that plaintiff has not complied with Section 402.704 (b) of Treasury Regulations 106, and, therefore, if judgment is rendered in plaintiff's favor herein, the amount thereof is limited to that portion of the aforesaid social security

taxes which plaintiff paid as an employer under Section 804 of Title VIII of the Social Security Act, as amended.

11. Denies each and every allegation contained in paragraph numbered XI thereof.

12. Admits the allegations contained in paragraph numbered XII thereof.

[fol. 12] 13. Denies each and every allegation contained in paragraph numbered XIII thereof.

Wherefore, the defendant demands judgment dismissing the complaint filed and that it be awarded the costs and disbursements of this action.

Edward M. Curran, United States Attorney; Grace B. Stiles, Assistant United States Attorney, Attorneys for Defendant.

# IN UNITED STATES DISTRICT COURT

## STIPULATION OF FACTS—Filed April 26, 1943

It is hereby stipulated and agreed by and between the parties herein, by their respective attorneys of record, that the following statements of fact shall be taken as true; provided, however, that this stipulation shall be without prejudice to the right of either party to introduce other and further evidence not inconsistent with the facts herein stipulated.

### I

Plaintiff, Better Business Bureau of Washington, D. C. Inc., is a corporation duly created and existing under the laws of the District of Columbia, having been incorporated on or about the 10th day of August, 1920, under the Act of March 3, 1901, (31 Stat. c. 854, par. 599). Plaintiff has been continuously since the date of its incorporation actively conducting its operation in the City of Washington, in the District of Columbia.

### II

The objects for which plaintiff was formed as stated in its Certificate of Incorporation are as follows:

“ \* \* \* the object for which it is formed is for the mutual [fol. 13] welfare, protection and improvement of business

methods among merchants and other persons engaged in any and all business or professions and occupations of every description whatsoever that deal directly or indirectly with the public at large, and for the educational and scientific advancements of business methods among persons, corporations or associations engaged in business in the District of Columbia so that the public can obtain a proper, clean, honest and fair treatment in its dealings or transactions with such merchants, tradesmen, corporations, associations or persons following a profession and at the same time protecting the interest of the latter classes of businesses to enable such as are engaged in the same to successfully and profitably conduct their business and for the further purposes of endeavoring to obtain the proper, just, fair and effective enforcement of the Act of Congress approved May 29th, 1916, otherwise known as "An Act to prevent fraudulent advertising in the District of Columbia."

A copy of Plaintiff's Revised By Laws adopted by its Board of Trustees on December 8, 1938, are hereto attached and made a part hereof as Exhibit "A".

### III.

Plaintiff was not organized for profit and has no shares of stock; nor does any part of its earnings inure to the benefit of any private shareholder or individual; it pays no dividends, and makes no refunds or disbursements to any person interested. Information that it has compiled is available to any one, and it makes no charge for any information furnished. There is no discrimination between members or non-members. Anyone who takes the trouble to inquire may have all the information that the Bureau has available or can obtain.

The money to carry on the work of the Bureau is raised by voluntary subscription or membership fees from interested business people; there is no fixed membership fee. [fol. 14] One individual or company may contribute \$25.00, while another may contribute \$100.00 or more. Its budget for the years of 1936 to 1941 inclusive differed in various amounts for its complete operation under its charter. The entire sum of the aforesaid budget was raised by contributions and none of it was defrayed by fees or charges made in connection with the service that it rendered to the vari-

ous individuals, companies or people who took advantage of the slogan "Before you invest, investigate."

Its Board of Trustees are elected annually from the membership. (See pamphlet attached hereto and made a part hereof as Exhibit B.) Its officers are elected by the Board of Trustees. They have nominal duties and are paid no salary. The only paid employees are the Managing Director and a limited number of employees serving under him. In carrying out its charter purposes, plaintiff's work is divided roughly into five subdivisions. They are—(1) Fraud Prevention (2) the fighting of Fraud, (3) the elevation of business standards, (4) informing and advising the consumer as a buyer, and (5) furnishing information and aid to various agencies of the Governments of the District of Columbia and the United States.

1. In the Fraud Prevention work, the purpose is to inform and warn its members and members of the general public of plans and schemes of various types of swindlers. Most of this service consists of answering specific inquiries. The Bureau furnishes the public with what information it has and when the facts are made available to the prospective victim the swindle usually appears rather obvious to even an illiterate person. A substantial part of the fraud prevention work has been in cooperation with newspapers and radio networks which, when the Bureau shows them that the prospective advertiser is a swindler, results many times in the refusal of the advertisement or offering, thus limiting materially the opportunity of the swindler to contact his prospective victim.

[fol. 15] (2) In Fraud fighting, general and abstract fraudulent practices are brought to the attention of the public. The true facts are carried in newspaper stories, radio talks, bulletins and posters so that the public may be thoroughly informed and protected. These are addressed to the public in general and are not in any way limited to the members. In many instances schemes are killed and do not have a chance to occur because the public was informed of these schemes.

(3) In the elevation of business standards, the purpose is to show and convince merchants that applying the doctrine of caveat emptor is not good business. In showing and convincing merchants that misleading advertising,



extravagant claims and price comparisons are not good business, the Bureau, not representing any particular merchants and having no axe of its own to grind, is in a peculiarly advantageous position in talking with the merchants. The elevation of business standards and ethics is obtained by meetings attended by official representatives of chain stores, independents, and every type of merchant where the follies of dishonest or at least unethical merchandising are pointed out and where a constructive, voluntary, plan of honest advertising is advocated, and which frequently results in the merchants adopting a program and the elimination of comparative prices, all in the interest of public confidence. In some instances special meetings of this character are held of particular business groups.

(4) The Bureau deals with the public in its fourth class of work. The Bureau believes that the public as a consumer has as much interest in our economic scheme as business men have, and that the public and the business man should work together for a better understanding of each other's problems. This is accomplished through talks by the Managing Director, Assistant Manager and other representatives of the Bureau to groups of individuals, and it is also carried on through the Bureau's bulletins and by [fol. 16] newspaper stories and radio addresses. The consuming public must be protected from fraudulent practices by making inquiries from some reliable source before its money is spent or before it becomes involved in any unknown or doubtful proposition. If the consuming public spends its money unwisely, it is a loss not only to the consumer, but to everyone else.

(5) The Bureau also cooperates with the various governmental agencies interested in law enforcement, as follows: United States Federal Trade Commission, United States Post Office Department of Justice, and certain War Emergency Agencies, etc., Health Department, License Bureau, Insurance Department, etc. of the District of Columbia.

The Bureau furnishes needful valuable and required proof to interested governmental agencies of schemes which they desire to know about in order to take immediate action to protect the public. The Bureau has nothing whatever to do with the enforcement of the law; that is the duty of the above mentioned various government agencies.

There are some eighty-five other Better Business Bureaus in the United States. The purposes of these Bureaus are substantially similar and each Bureau exchanges information with other Bureaus, but each is independently operated by local citizens and all the expenses are likewise defrayed by local citizens.

Plaintiff has never indulged in any political activities nor does it have anything whatsoever to do with same:

#### IV

Plaintiff was granted exemption from federal income taxes under the provisions of Section 101(7) of the Internal Revenue Code and the corresponding provisions of the Revenue Act of 1938 and prior Revenue Acts, applying to business leagues, chambers of commerce, real estate boards or boards of trade not organized for profit, and no part of the net earnings of which inure to the benefit of private shareholder or individual.

[fol. 17]

#### V

For the taxable period beginning January 1, 1937 and up to and including the taxable period ending December 31, 1941, plaintiff filed with the Commissioner of Internal Revenue, Treasury Department Forms SS-1 and SS-2 under Title VIII of the Social Security Act and the Federal Insurance Contribution Act. The Social Security tax reported on each of these returns was assessed against and paid by plaintiff to the Collector of Internal Revenue for the District of Maryland for each of the calendar years 1937 to 1941 in the following amounts:

1937	\$268.53
1938	277.67
1939	274.08
1940	265.56
1941	292.98
Total	\$1,378.82

#### VI

On or about January 21, 1941 and February 7, 1942, plaintiff duly and timely filed with the Collector of Internal Revenue two claims for refund of the aforesaid social security taxes in the sum of \$1,033.56 and \$292.98, respectively, claiming refund thereof on the ground that plaintiff was

"organized wholly for educational, scientific and civic purposes"; no part of the income of which inured to the benefit of any private individual; and that under the provisions of Section 1426(b)(8) of the Internal Revenue Code, it was exempt from the payment of federal social security taxes. Copies of said claims for refund are hereto attached and made a part hereof as Exhibits "C" and "D", respectively.

## VII

The Commissioner of Internal Revenue officially disallowed the aforesaid claims for refund on July 3, 1941 [fol. 18] and June 26, 1942, on which respective dates notices of disallowance thereof were sent to plaintiff by registered mail in accordance with Section 3773(a)(2) of the Internal Revenue Code. Copies of said letters are hereto attached and made a part hereof as Exhibits "E" and "F", respectively.

## VIII

The only issue involved in this action is whether or not plaintiff is exempt from taxation under the provisions of Section 1426(b)(8) of the Internal Revenue Code and the corresponding provisions of the Social Security Act and Federal Insurance Contribution Act.

Lyon & Lyon, Counsel for Plaintiff. Grace B. Stiles,  
Ass't. United States Attorney, Counsel for Defendant.

April, 1943.

## EXHIBIT "A"

REVISED BY LAWS OF THE BETTER BUSINESS BUREAU OF THE  
DISTRICT OF WASHINGTON, D. C. INC.

Unanimously adopted by the Board of Trustees at a duly and regular meeting called for that purpose on December 6, 1938.

## Article I

### Object—Powers—Membership

Section 1. There shall be no Capital Stock.

Section 2. The Better Business Bureau of the District of Columbia has been incorporated or organized for the mutual welfare, protection and improvement of business

methods among merchants, individuals or corporations and other persons or associations or organizations engaged in any and all business or professions and occupations of [fol. 19] every description whatsoever that deal directly or indirectly with the public at large, and for the educational and scientific advancement of business methods among persons, corporations or associations engaged in business in the District of Columbia, so that the public can obtain a proper, clean, honest and fair treatment in its dealings or transactions with such merchants, tradesmen, corporations, associations or persons following a profession, and at the same time protecting the interest and welfare of the latter classes of businesses to enable such as are engaged in the same to successfully and profitably conduct their business, and for the further purpose of endeavoring to obtain the proper, just, fair and effective enforcement of the Act of Congress, approved May 29th, 1916, otherwise known as "An Act to prevent fraudulent advertising in the District of Columbia," and this corporation or organization shall be maintained solely by voluntary subscriptions or monies paid in to the Bureau by any person, firm, corporation, or association interested in better business ethics and methods and such person, firm, corporation or association making payment of subscriptions thereto shall be eligible to membership. Membership to be held through yearly subscriptions, payable annually, semiannually or quarterly, in advance.

Section 3. The voluntary subscriptions, which may be otherwise known as dues, of the Better Business Bureau of the District of Columbia, shall be made in such amount or amounts as may be determined by the Board of Trustees.

Section 4. That the Board of Trustees shall elect members to this corporation or organization and may prescribe such rules and regulations from time to time as it may deem fit and proper for this purpose.

Section 5. Immediately upon the adjournment of the annual meeting of the subscribers the newly elected Board of Trustees shall convene for the purpose of organizing such new board and the election of the proper officers required by the Charter of this corporation or organization.



## Article II

## Meetings

Section 1. The annual meeting of the members shall be held on the third Tuesday of June in each year and may be recessed or adjourned from time to time at the pleasure of the members present at the same.

Section 2. At such meeting of the members or subscribers, the only business to be transacted is the submission and consideration of the annual report from the Chairman of the Board, report of the Treasurer, reports of other officers as may be required by the Board; election of the Board of Trustees for the ensuing year and/or until the election of their successors, and such other business as the Board or Chairman may desire to bring to the attention and consideration of the members.

## Article III

## Board of Trustees

Section 1. The Board of Trustees shall be constituted as provided in the Charter of this corporation, that is, the number of such Board shall not be less than fifteen (15) nor more than forty (40). That in the event the members of this corporation or organization shall fail to provide or elect the total number of Trustees permitted by its Charter, such Board of Trustees shall have the power to nominate and elect the balance of the number of Trustees required or permitted by its Charter at any monthly meeting of said Board so as to enable such Board to have a full membership of forty (40) Trustees if it is so desired by said Board. The Board shall create and define the policy of this corporation or organization and shall have jurisdiction over all matters not otherwise provided for and may have one regular meeting of the Board of Trustees in each month of the year. Special meetings of the Board may be called by the President or Chairman of the Board of Trustees at his discretion or any five (5) members [fol. 21] thereof may call such meetings on two days' written notice.

Section 2. A Quorum of the Board of Trustees shall consist of twelve (12) members of the same.

## Article IV

### Officers

**Section 1.** The officers of this corporation or organization shall be:

President (who may be otherwise known as the Chairman) of the Board of Trustees

Vice President (who may be otherwise known as Vice-Chairman)

Treasurer

Assistant Treasurer

Secretary

Counsel

The above mentioned officers shall be elected by the Board of Trustees and their respective terms of office shall be for one year and/or until the election of their successors.

**Section 2.** The Secretary of this corporation or organization shall be the Managing Director of the same and he shall be appointed by the Board of Trustees and his salary shall be fixed by said Board in such annual amount (as a basis of computation) and for such a period as this Board in its discretion may deem fit and proper, such salary to be payable in bi-monthly installments.

**Section 3.** The President, Vice-President or Treasurer of the Advertising Club of Washington shall automatically become a member of the Board of Trustees in the order in which they are named, so that the Advertising Club of Washington aforesaid shall always be represented on this Board by one of its officers.

[fol. 22]

## Article V

### Committees

**Section 1.** The regular standing committees shall be: Executive, Membership, Subscriptions or Dues, Finance, Budget and Audit, Publicity, and Merchandise or Retail Practices.

**Section 2.** Each Committee shall consist of a chairman and of as many members as authorized by the Board of Trustees and they may be appointed by the Chairman of the Board.

## Article VI

### Duties of Officers

Section 1. The duties of the Chairman shall be to preside over all meetings of subscribers or members of this corporation or organization, and all meetings of the Board of Trustees; and he shall have the general management, control and supervision of the business affairs of this corporation or organization, and if he so desires he may obtain the advice and approval of the Executive Committee with respect to his decision and action which shall be the function of this latter Committee. In his absence the Vice-Chairman shall perform the duties required of the office of the Chairman.

Section 2. The Treasurer shall deposit the monies or securities belonging to this corporation in any well-known or substantial financial institution in the District of Columbia, or such other depository or depositories that may be designated by the Board of Trustees; there shall be appointed by the Board of Trustees an Assistant Treasurer, who shall perform the duties of the Treasurer in the absence of the latter or in the event a vacancy occurs in that office, and the Board of Trustees shall keep all books of account, relating to the financial or fiscal business affairs of this corporation or organization; he shall make a report of the financial affairs of this corporation or organization [fol. 23] to the President of the Board of Trustees whenever requested, and shall make a report of the financial affairs of this corporation or organization at the annual meeting of its subscribers; he shall give such bond as may be required by the Board of Trustees. All checks or other orders for the payment of money or delivery of securities or properties belonging to this corporation or organization shall be signed by the President or Treasurer (and in the absence of the latter, by the Assistant Treasurer) and by other member or members of the Board of Trustees selected or named by it with the Secretary (or Managing Director) or Assistant Director, and issued upon an order signed by the Chairman or Secretary (or Managing Director).

Section 3. The Secretary (or Managing Director) shall keep a record of all meetings of the subscribers and the Board of Trustees in books provided for that purpose. He

shall keep such other books and records and perform such other duties as may be assigned to him.

Section 4. That the Board of Trustees may appoint an Assistant Secretary (or Assistant Managing Director) who shall perform the duties required of the office of the Secretary (or Managing Director) in the absence of such Secretary or Managing Director.

Section 5. The duties of the Secretary (or Managing Director) of this corporation or organization, shall be the general management of the conduct of the same, (under the supervision of the President) and shall conduct all investigations and take such action as in his judgment he deems best, fit and proper, for the general conduct of this corporation or organization as to the final disposition to be made of cases investigated by him. He shall have a wide scope of authority until such time as the Board of Trustees or the Executive Committee meets, when a report shall be made to either and/or both parties for its approval or disapproval of the activities and determinations made by him during the interim.

[fol. 24]

## Article VII

### Certificate of Membership

Section 1. The membership of this corporation or organization shall be evidenced by a letter or certificate which shall bear the signature of the Chairman or Secretary with the impression of the official seal of the corporation thereon, it being understood that such membership or evidence thereof shall not be used for advertising purposes.

## Article VIII

### Amendments, etc.

Section 1. These By-Laws may be amended by a majority vote of the Board of Trustees at any regular or special meeting, provided a notice in writing of the intention to amend such By-Laws shall have been communicated to each member of the Board.

Section 2. Anything this corporation may do under its charter and laws of the District of Columbia, and not herein provided for, shall be within the jurisdiction of the Board



of Trustees, which has the authority to perform any legal act for the conduct, advancement and the welfare of this corporation or organization.

## EXHIBIT "B"

The Better Business Bureau  
of Washington, D. C., Inc.

What it is and  
What it does  
to serve the  
Community

"Before You Invest—Investigate"

### [fol. 25] 1. What is the Better Business Bureau?

It is a non-profit organization established in August, 1920, by leading retail, wholesale, financial and industrial organizations in this community for the following purposes:

- (a) Fraud prevention.
- (b) Fraud prosecution.
- (c) Promotion of fair advertising and selling practices.
- (d) Consumer education in money management, in buying and in everyday relations with business.

### 2. How is the Better Business Bureau financed?

Solely through membership support of business firms whose fees vary with the size of the business and the extent of services rendered.

### 3. Who may become a member of the Bureau?

Any person, firm, or organization believing in and subscribing to better business ethics is eligible for application to membership, subject to approval of the Board of Trustees.

### 4. Is the Better Business Bureau a local organization?

Yes, but it is a member of the National Association of Better Business Bureaus cooperating with similar Bureaus in over 70 cities, exchanging information and reports.

### 5. Who directs the local Bureau?

A board of trustees determines the general policies. These men serve without compensation and represent the many fields in which the Bureau is active.

## 6. How is the Bureau operated?

Through an experienced staff, including a director, assistant director, division managers, trained shoppers and office personnel.

## [fol. 26] 7. How does the Bureau serve the public?

- (a) Providing factual information to inquirers.
- (b) Handling complaints by the public against business.
- (c) Education in fraud prevention.
- (d) Promoting a better understanding between business and the public.
- (e) Aiding in the prevention of swindles and the prosecution of swindlers.
- (f) Promotion and development of fair trade practices in advertising and selling.

## 8. How does the Bureau reach the Public?

- (a) By Radio talks exposing prevalent rackets.
- (b) Advertisements appearing in the Newspapers and the Shopping News.
- (c) Through the distribution of Fact Booklets designed for consumer education.
- (d) By talks made before business, social, and educational groups.
- (e) By publicity released to the press on particular promotions and unfair schemes.

## 9. Is the Bureau interested only in prosecution of those cases which are in violation of law?

No, the Bureau believes in business protecting itself and the public by self-regulation. It works for cooperation first; but when that cooperation cannot be had the Bureau refers the matter to the proper government agency, submitting all evidence for its consideration.

## 10. How much money is annually wasted through fake investments or fraudulent merchandise schemes?

According to the New York Crime Commission our annual fraud tax is \$55.00 for every adult in the United States.

## 11. Does this affect your business?

Yes, waste in purchasing power is a definite loss to legitimate business whose success is dependent upon the income [fol. 27] of the community to purchase goods and investments of dependable quality.

12. What services are rendered by the Merchandise Division?

(a) Meets with trade groups to establish standards for better advertising and selling.

(b) Eliminates unfair advertising, which tends to destroy consumer confidence in all advertising.

(c) Checks local advertising and radio continuity for accuracy and seeks the cooperation of the advertiser when inaccuracies are discovered.

(d) Acceptance and adjustment of consumer complaints, bringing about a better understanding between business and consumer.

(e) Keeps merchants informed of new legislation applicable to business and assists in putting these regulations into practice.

13. What services are rendered by the Financial Division?

(a) Development and dissemination of factual information in connection with Bureau's well-known policy of "Before You Invest—Investigate."

(b) Cooperates with Government agencies to check fraudulent promotions and assists in the prosecution of offenders, when necessary.

14. What other services are rendered by the Bureau to the public and business?

(a) Charity rackets, solicitation schemes and other promotions are exposed.

(b) Classified advertising rackets such as "stuffed flats," employment agency racketeers and movie careers are called to the attention of newspapers and their cooperation requested.

15. What services are available to members of the Bureau?

[fol. 28] (a) Bulletin at regular intervals giving valuable information on current activities.

(b) Upon request special reports on individuals or firms operating in this community, or outside Washington.

16. Why should business support the Bureau financially?

(a) Because it is protecting the buying public against misrepresentation, deception and fraud.

(b) Because it is building for legitimate business a greater good will by lifting suspicion from the honest and exposing the dishonest.

(c) Because from purely a civic point of view it is a small price to pay for preserving the security and good will to which all legitimate business is entitled, and which if endangered is damaging to you as well as the firm directly affected.

(d) And because, in many instances, services rendered by the Bureau will pay for the membership fee many times over.

**Officers and Board of Trustees of  
The Better Business Bureau, Inc.**

**Edward C. Baltz, Chairman**  
*Perpetual Building Association*

**James W. Hardey, Vice-Chairman**  
*Woodward & Lothrop*

**Hulbert T. Bisselle, Treasurer**  
*Riggs National Bank*

**R. B. H. Lyon, Counsel**  
*Lyon & Lyon*

**Arthur J. Sundlum, Assistant Treasurer**  
*A. Kahn, Inc.*

**C. G. Sheffield, Chairman, Merchandise Committee**  
*Julius Garfinckel & Company*

**C. A. Aspinwall**  
*Security Storage Company*

[fol. 29]

**Earl D. Baker**  
*Washington Daily News*

**S. Meyer Barnett**  
*Hub Furniture Company*

**Kenneth H. Berkeley**  
*Radio Station WMAL*

**Donald M. Bernard**  
*Washington Post*

**Y. E. Booker**  
*Y. E. Booker & Company*

**Everett J. Boothby**  
*Washington Gas Light Company*



B. B. Burgunder  
*S. Kann Sons Company*

George B. Burrus  
*Peoples Drug Stores, Inc.*

Lee D. Butler  
*Lee D. Butler, Inc.*

John H. Davis  
*Judd & Detweiler, Inc.*

Charles B. Dulcan, Sr.  
*The Hecht Company*

Joshua Evans, Jr.  
*Hamilton National Bank*

Dr. Clyde M. Gearhart  
*National Laundry*

Ralph L. Goldsmith  
*Lansburgh's*

Miss Margaret Gollan  
*Frank R. Jelleff, Inc.*

Gerald D. Grosner  
*Grosner of 1325 F St.*

[fol. 30]

J. J. Hasley  
*The Palais Royal*

J. Wriley Jacobs  
*B. F. Saul Company*

Louis D. Krakow  
*Pres., Advertising Club of Washington, D. C.*

C. J. Mack  
*Mayflower Hotel*

Archibald McLachlen  
*McLachlen Banking Corporation*

E. D. Merrill  
*Capital Transit Company*

Thornton W. Owen  
*Thomas J. Owen & Son*

William N. Payne, Jr.  
*Eastern Building & Loan Association*

John A. Reilly  
*Second National Bank*

Herbert J. Rich  
*B. Rich's Sons*

Charles A. Robinson  
*Chesapeake & Potomac Telephone Co.*

H. L. Rust, Jr.  
*H. L. Rust Company*

Charles H. St. John  
*Griffith-Consumers Company*

C. Melvin Sharpe  
*Potomac Electric Power Company*

Frederick P. H. Siddons  
*American Security & Trust Company*

[fol. 31]

Harry E. Ullman  
*The Goldenberg Company*

Dewey Zirkin  
*H. Zirkin & Sons*

Claude H. Woodward, Director  
 Better Business Bureau of Washington, D. C.  
 534 Evening Star Building  
 Phone NA 8164

## EXHIBIT "C"

## Claim

To be filed with the Collector where assessment was made or tax paid

Received Mar. 24, 1941, Control Div.

Received Mar. 21, 1941, Accounts and Collections.

417548

Collector's Stamp  
Collector of Internal Revenue  
Correspondence Section  
Employees Tax Service

Received  
Jan. 23, 1941

Received  
Mail Room  
Baltimore, Md.  
Collector of Internal Revenue  
District of Maryland  
Jan. 23, 1941

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

[fol. 32] ☒ Refund of Tax Illegally Collected.

☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.

☐ Abatement of Tax Assessed (not applicable to estate or income taxes).

District of Columbia, City of Washington, ss.:

Name of taxpayer: Better Business Bureau of Washington, D. C., Inc.

Business address: 534 Evening Star Building, 11th & Penna. Ave., N. W.

Residence: Washington, D. C.

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed: Maryland.

2. Period (if for income tax, make separate form for each taxable year) from January 1, 1937, to December 31, 1940.

3. Character of assessment or tax: Imposed under Federal Insurance Contributions Act (formerly Title VIII, Social Security Act). See attached schedules.

4. Amount of assessment, \$1033.56.

5. Date stamps were purchased from the Government —

6. Amount to be refunded with interest, \$1033.56.

7. Amount to be abated (not applicable to income or estate taxes ——— \$ ———.

8. The time within which this claim may be legally filed expires under Section 402.704, Reg. 106 and prior refunding provisions on January 31, 1941.

The deponent verily believes that this claim should be allowed for the following reasons:

This claim for refund is made on the ground that the claimant is a corporation organized wholly for educational, scientific and civic purposes; that its income, which is solely derived from subscriptions and voluntary contributions, is [fol. 33] used to defray its necessary operating expenses and no part thereof inures to the benefit of any private individual; and that, under the provisions of the controlling Revenue Act and the Regulations of the Commissioner it was properly exempt from the payment of the taxes in question and therefore the same should be refunded. (See: Better Business Bureau of Oklahoma City, Inc. v. Jones, 34 F. Supp. 573).

(Attach letter—also sheets if space is not sufficient)

(Signed) Better Business Bureau of Washington,  
D. C., Inc., by Claude H. Woodward, Director.

Sworn to and subscribed before me this 22 day of  
January, 1941. T. W. Raymond, Notary Public.



[fol. 34]

## Certificate

I certify that an examination of the records of this office shows the following facts as to the assessment and payment of the tax:

Claim No. 417548

Form 88-1a  
Character of  
assessment  
and period  
covered  
FICA

	List	Year	Month	Account No. or Page Line	Amount assessed	Paid, Abated, or Credited Date	Amount	Pd. Ab. Cr.
Jan—1937	FICA	1937	Feb	007298	\$23.94	2-5-37	\$23.94	Pd.
Feb—1937	FICA	1937	Mar	017796	23.74	3-15-37	23.74	Pd.
Mar—1937	FICA	1937	July	011487	23.98	4-30-37	23.98	Pd.
Apr—1937	FICA	1937	Sept	011288	25.44	6-1-37	25.44	Pd.
May—1937	FICA	1937	July	010139	25.41	6-30-37	25.41	Pd.
Jun—1937	FICA	1937	Oct	005129	25.38	7-21-37	25.38	Pd.
Jul—1937	FICA	1937	Aug	022416	26.38	8-5-37	26.38	Pd.
Aug—1937	FICA	1937	Sep	018056	25.53	9-2-37	25.53	Pd.
Sep—1937	FICA	1937	Oct	025603	17.54	10-14-37	17.54	Pd.
Oct—1937	FICA	1937	Nov	20343	17.05	11-12-37	17.05	Pd.
Nov—1937	FICA	1937	Dec.	22783	17.10	12-14-37	17.10	Pd.
Dec.—1937	FICA	1938	Jan	25700	17.04	1-13-38	17.04	Pd.

W. H. MAGRUDER, 5263  
Collector of Internal Revenue. (District)  
WHM KBM

Amount claimed \$1033.56  
Amount allowed \$  
Amount rejected \$1033.56  
Claim examined by HG 6-20-41  
Claim approved by GEL, Chief of Division.

## Instructions

1. The claim must set forth in detail and under oath each ground upon which it is made, and facts sufficient to apprise the Commissioner of the exact basis thereof.
2. The claim should be sworn to by the taxpayer, if possible. Whenever it is necessary to have the claim executed by an attorney or agent, on behalf of the taxpayer, an authenticated copy of the document specifically authorizing such agent or attorney to sign the claim on behalf of the taxpayer shall accompany the claim. The oath will be administered without charge by any collector, deputy collector, or internal revenue agent.
3. If a return is filed by an individual and a refund claim is thereafter filed by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed

to the claim, to show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made on the claim showing that the return was filed by the fiduciary and that the latter is still acting.

4. Where the taxpayer is a corporation, the claim shall be signed with the corporate name, followed by the signature and title of the officer having authority to sign for the corporation.

[fol. 35]

Character of assessment and period covered	List	Year	Month	Account No. or Page Line	Amount assessed	Paid, Abated, or Credited		Pd. Ab. Cr.
						Date	Amount	
1st Q 1938	FICA	1938	Apr	4-10463	75.92	4-13-38	75.92	Pd.
2nd Q 1938	FICA	1938	July	7-5538	75.59	7-5-38	75.59	Pd.
3rd Q 1938	FICA	1938	Oct	10-16672	61.74	10-26-38	61.74	Pd.
4th Q 1938	FICA	1939	Jan	1-106678	64.62	1-17-39	64.62	Pd.
							277.67	
1st Q 1939	FICA	1939	May	5-111212	77.94	5-1-39	77.94	Pd.
2nd Q 1939	FICA	1939	July	7-100191	77.54	7-1-39	77.54	Pd.
3rd Q 1939	FICA	1939	Nov.	11-107291	81.26	10-31-39	81.26	Pd.
4th Q 1939	FICA	1940	Feb	2-160703	29.84			
				P	1.49			
				I	01	2-2-40	37.34	Pd.
							274.08	
1st Q 1940	FICA	1940	Apr	4-109155	79.12	4-16-40	79.12	Pd.
2nd Q 1940	FICA	1940	July	7-160097	71.84	6-29-40	71.84	Pd.
3rd Q 1940	FICA	1940	Oct	10-111093	66.58	10-31-40	66.58	Pd.
4th Q 1940	FICA	1941	Feb.	2-161119	48.02	1-15-41	48.02	Pd.
Excess of \$6.00 on 4th Q 1939 used on 2nd Q 1940 return					\$1,080.04		\$1,086.04	

## EXHIBIT D

### Claim

To be filed with the Collector where assessment was made or tax paid.

Received Jun. 4, 1942, Control Div.

Received Mar. 21, 1941, Accounts and Collections.

[fol. 36]

436487

Collector's Stamp  
 Collector of Internal Revenue  
 District of Maryland  
 Correspondence Section  
 Employment Tax Division  
 Received  
 Feb. 9, 1942

Received  
 Mail Room  
 Baltimore, Md.  
 Collector of Internal Revenue  
 District of Maryland  
 Jan. 23, 1941

*Claim*

To be filed with the Collector where assessment was made or tax paid.

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

- ☒ Refund of Tax Illegally Collected.  
☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.  
☐ Abatement of Tax Assessed (not applicable to estate or income taxes).

District of Columbia, City of Washington, ss.:

Name of taxpayer: Better Business Bureau of Washington, D. C., Inc.

Business address: 534 Evening Star Newspaper Building, 11th & Penna. Ave., N. W.

Washington, D. C. Identification No. 53-0034880.

The deponent, being duly sworn, according to law, deposes and says that this statement is made on behalf of the [fol. 37] taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed: Maryland.
2. Period (if for income tax, make separate form for each taxable year) from January 1, 1941 to December 31, 1941.

3. Character of assessment or tax Imposed under Federal Insurance Contributions Act (formerly Title VIII, Social Security Act).

4. Amount of assessment, \$292.98; dates of payment see attached schedules.

5. Date stamps were purchased from the Government——

6. Amount to be refunded with interest ..... \$292.98.

7. Amount to be abated (not applicable to income or estate taxes) ..... \$——

8. The time within which this claim may be legally filed expires, under Section 402.704, Reg. 106 and prior refunding provisions on January 31, 1943.

The deponent verily believes that this claim should be allowed for the following reasons:

This claim for refund is made on the ground that the claimant is a corporation organized wholly for educational, scientific and civic purposes; that its income, which is solely derived from subscriptions and voluntary contributions, is used to defray its necessary operating expenses and no part thereof inures to the benefit of any private individual; and that, under the provisions of the controlling Revenue Act and the Regulations of the Commission it was properly exempt from the payment of the taxes in question and therefore the same should be refunded. (See: Better Business Bureau of Oklahoma City, Inc. v. Jones, 34 F. Supp. 573, which decision has been affirmed by the U. S. Circuit Court [fol. 38] of Appeals for the 10th Circuit, Case 2277, September Term 1941, decided October 31, 1941).

(Attach letter also sheets if space is not sufficient)

(Signed) Better Business Bureau of Washington,  
D. C. Inc., by Claude H. Woodward, Director.

Sworn to and subscribed before me this 5 day of  
February, 1942. T. W. Raymond, Notary Public.



[fol. 39]

## Certificate 7276

I certify that an examination of the records of this office shows the following facts as to the assessment and payment of the tax:

Claim No. 436487

Forms 88-1a  
Character of  
assessment  
and period  
covered  
FICA

	List	Year	Month	Account No. or Page Line	Amount assessed	Paid, Abated, or Credited Date	Amount	Pd. Ab. Cr.
1st Q 1941	FICA	Apr.	1941	107685	\$79.06	4-18-41	\$79.06	Pd.
2nd Q 1941	FICA	Jul.	1941	161990	97.18	7-2-41	97.18	Pd.
3rd Q 1941	FICA	Oct.	1941	107213	76.52	10-17-41	76.52	Pd.
4th Q 1941	FICA	Dec.	1941	100826	40.22	12-31-41	40.22	Pd.
Total					\$292.98	Total	\$292.98	

R. M. DIEMERS,

Deputy Collector of Internal Revenue.

Maryland

(District)

WHM

RW

Claim examined by HG

Claim approved by GEL, Chief of Division.

## Instructions

1. The claim must set forth in detail and under oath each ground upon which it is made, and facts sufficient to apprise the Commissioner of the exact basis thereof.

2. The claim should be sworn to by the taxpayer, if possible. Whenever it is necessary to have the claim executed by an attorney or agent, on behalf of the taxpayer, an authenticated copy of the document specifically authorizing such agent or attorney to sign the claim on behalf of the taxpayer shall accompany the claim. The oath will be administered without charge by any collector, deputy collector, or internal revenue agent.

3. If a return is filed by an individual and a refund claim is thereafter filed by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accom-

pany the claim, provided a statement is made on the claim showing that the return was filed by the fiduciary and that the latter is still acting.

4. Where the taxpayer is a corporation, the claim shall be signed with the corporate name, followed by the signature and title of the officer having authority to sign for the corporation.

[fol. 40]

EXHIBIT "E"

A&C:A:AA:5

CI-417548

HG

Better Business Bureau of Washington, D. C., Inc.,  
534 Evening Star Building,  
11th Street and Pennsylvania Avenue, Northwest,  
Washington, D. C.

Sirs:

Reference is made to your claim on Form 843 for refund of \$1,033.56, representing taxes under Title VIII of the Social Security Act and the Federal Insurance Contributions Act for the taxable periods from January 1, 1937 through December 31, 1940.

The claim is based on the contention that the corporation is organized wholly for educational, scientific and civic purposes, and that no part of its income inures to the benefit of any private individual.

The records of the Bureau indicate that your organization has been granted exemption from Federal Income tax under the provisions of Section 101 (7) of the Revenue Act of 1936 and the corresponding provisions of prior revenue acts applying to business leagues, chambers of commerce, real-estate boards, or boards of trade, not organized for profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual. The provisions of Section 101 (7) of the Revenue Act of 1936 and the corresponding provisions of prior revenue acts are similar to the provisions of Section 101 (7) of the Internal Revenue Code. The exempt status so established under income tax laws does not extend to the taxes imposed under Title VIII of the Social Security Act or the Federal Insurance Contributions Act. There is no provision in such acts

under which your organization is entitled, by reason of its character or purposes, to exemption from the taxes imposed thereby.

In view of the foregoing, your claim is hereby disallowed.

[fol. 41] 26a A&C:A:AA:5  
CI-417548  
HG

Better Business Bureau of Washington, D. C., Inc.

This notice of disallowance is sent by registered mail in accordance with the provisions of Section 3772 (a) (2) of the Internal Revenue Code.

It is to be noted, however, that effective January 1, 1940, Section 1426 (b) (10) (A) (i) of the Federal Insurance Contributions Act, in force on and after January 1, 1940, excepts from "employment" services performed in any calendar quarter in the employ of an organization exempt from Federal income tax under Section 101 of the Internal Revenue Code, if the remuneration for such services does not exceed \$45.00. Since your organization is exempt from Federal income tax under Section 101 (7) of the Code, services performed on and after January 1, 1940, by an employee in a calendar quarter in the employ of your organization are excepted from "employment" if the remuneration for the services does not exceed \$45.00.

Respectfully, Guy T. Helvering, Commissioner. By  
Deputy Commissioner.

HG:ML  
HG 6/20 GEL 7/1 GS 7-2

[fol. 42] EXHIBIT "F"

A&C:A:AA:5-HG  
CI-436487

Better Business Bureau of Washington, D. C., Inc.  
534 Evening Star Newspaper Building,  
11th Street and Pennsylvania Avenue, Northwest,  
Washington, D. C.

Sirs:

Reference is made to your claim on Form 843 for refund of \$292.98 representing taxes under the Federal Insurance

Contributions Act for the taxable periods from January 1, 1941 through December 31, 1941.

The claim is based on the following statements:

"This claim for refund is made on the ground that the claimant is a corporation organized wholly for educational, scientific and civil purposes; that its income, which is solely derived from subscriptions and voluntary contributions, is used to defray its necessary operating expenses and no part thereof inures to the benefit of any private individual; and that, under the provisions of the controlling Revenue Act and the Regulations of the Commissioner it was properly exempt from the payment of the taxes in question and therefore the same should be refunded. (See: *Better Business Bureau of Oklahoma City, Inc. v. Jones*, 34 Supp. 573, which decision has been affirmed by the U. S. Circuit Court of Appeals for the 10th Circuit, Case 2277, September Term 1941, decided October 31, 1941)."

The records of the Bureau indicate that your organization has been granted exemption under Federal income tax law in view of the specific provisions of Section 101 (7) of the Revenue Act of 1936 and the corresponding provisions of prior revenue acts, applying to business leagues, chambers of commerce, real-estate boards, or boards of trade not organized for profit, and no part of the net earnings of which [fol. 43] inures to the benefit of any private shareholder or individual. The provisions of Section 101 (7) of the Revenue Act of 1936 and the corresponding provisions of prior revenue acts are similar to the provisions of Section 101 (7) of the Internal Revenue Code. The exempt status so established under income tax law does not extend to the taxes imposed by the Federal Insurance Contributions Act. There is no provision in such Act under which your organization is entitled, by reason of its character or purposes, to exemption from the taxes imposed thereby. The Bureau does not consider the court decision in the case of *Better Business Bureau of Oklahoma City, Inc. v. Jones*, Collector, as controlling in the present case. Therefore, services performed by the employees of your organization are not excepted from "employment" for Federal employment tax purposes except to the extent hereinafter stated. Your claim is hereby disallowed.

This notice of disallowance is sent by registered mail in accordance with the provisions of Section 3772 (a) (2) of the Internal Revenue Code.

It is to be noted, however, that effective January 1, 1940, Section 1426 (b)(10)(A)(i) of the Federal Insurance Contributions Act excepts from "employment" services performed in any calendar quarter in the employ of an organization exempt from Federal income tax under Section 101 of the Internal Revenue Code, if the remuneration for such services does not exceed \$45.00. Since your organization is exempt from Federal income tax under Section 101(7) of the Code, services performed on and after January 1, 1940, by an employee in a calendar quarter in the employ of your organization are excepted from "employment" if the remuneration for services does not exceed \$45.00.

Respectfully, Guy T. Helvering, Commissioner. By  
Deputy Commissioner.

HG/MBK

[fol, 44] IN UNITED STATES DISTRICT COURT

MOTION FOR SUMMARY JUDGMENT ON AGREED STATEMENT OF  
FACTS UNDER RULE 56, SUB-PARAGRAPH 'C'—Filed  
Nov. 4, 1943

The Plaintiff, the Better Business Bureau of Washington, D. C. Inc., moves this Honorable Court as follows:

To give the Plaintiff a Summary Judgment in the full amount claimed for the following reasons:

1. There exists no disputed fact as all the facts have been agreed upon, and a Stipulation to this effect is now on file in the above entitled cause.

2. The only disputed question involved is "one of law," it being contended by this Plaintiff that "it is exempt from taxation of the Federal Social Security Tax" under exemption Section 1011, Title 42, USCA, being Chap. 531, Title VIII, Sec. 811, 49 Stat. 639 of the Social Security Law of August 14, 1935, as an educational and scientific corporation organized and exclusively operated for these purposes.



3. The Plaintiff is entitled to Summary Judgment of the amount claimed in the Complaint and is exempt from any future taxation under the existing law above stated.

4. The Brief of the Plaintiff covering the points and authorities supporting the contention is filed herewith and attached hereto.

12/23/43. Overruled.

Bailey, J., Lyon & Lyon. By R. B. H. Lyon, 1420 New York Avenue, N. W., Washington, D. C. Attorneys for Plaintiff.

[fol. 45] To: Hon. Edward M. Curran, United States Attorney and Attorney for the Defendant

Please take notice, that the undersigned will bring the above Motion on for hearing before this Court at the Motions Court Room in the District Court of the United States for the District of Columbia (Court House) on the — day —, 1943 at 10 a. m. of that day or as soon thereafter as counsel can be heard.

Lyon & Lyon, By R. B. H. Lyon, 1420 New York Avenue, N. W. Washington, D. C. Attorneys for Plaintiff.

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#### IN UNITED STATES DISTRICT COURT

AFFIDAVIT IN SUPPORT OF MOTION OF PLAINTIFF FOR SUMMARY JUDGMENT UNDER RULE 56, SUBPARAGRAPH C UPON AN AGREED STATEMENT OF FACTS—Filed November 4, 1943

Personally appeared before me, a Notary Public, R. B. H. Lyon, who being sworn according to law, states:

That he is a member of the firm of Lyon & Lyon, Attorneys for the Plaintiff in the above entitled cause.

That there has been filed in the above entitled cause an Agreed Statement of Facts by the parties to this suit covering the entire statement of the case of the parties hereto, thereby eliminating all disputes relating to the facts in the case.

That in view of the above mentioned Agreed Statement of Facts the only question involved in the case to be decided is "one of law."

[fol. 46] That in support of the contention of the parties hereto the brief covering the points and authorities has been filed with the Motion for Summary Judgment and will be explained or enlarged thereon in oral argument before this Honorable Court.

R. B. H. LYON, subscribed and sworn to before me this 4th day of November 1943.

Ruth E. Angelo, Notary Public, D. C.

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IN UNITED STATES DISTRICT COURT

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT—Filed November 10, 1943

Now comes the defendant, the United States of America, by its attorney, Edward M. Curran, United States Attorney in and for the District of Columbia, and moves the Court to enter summary judgment in favor of the defendant and against the plaintiff in the above-entitled action for the following reasons:

1. Upon the basis of the stipulation of agreed facts entered into by and between the respective parties herein (in lieu of admissions and affidavits provided for in Rule 56 of the Federal Rules of Civil Procedure), the defendant is entitled to judgment in its favor as a matter of law.

2. Upon the basis of the facts as stipulated to, plaintiff is not exempt from taxation under the provisions of Section 1426 (b) (8) of the Internal Revenue Code and corresponding provisions of the Social Security Act and Federal Insurance Contribution Act.

3. Upon the basis of the facts as stipulated to, and as a matter of law, plaintiff is not entitled to a refund of the taxes sought to be recovered in this action.

[fol. 47] Wherefore, the defendant demands judgment, dismissing the complaint filed herein.

12/23/43. Sustained.

Bailey, J. Edward M. Curran, United States Attorney.

## IN UNITED STATES DISTRICT COURT

MEMORANDUM OF OPINION—Filed December 23, 1943

I agree with the contention of the defendant that the Better Business Bureau of Washington, D. C., Inc., was not organized exclusively for educational purposes. The theory of the decision of the Circuit Court of Appeals of the 10th Circuit in *Jones v. The Better Business Bureau of Oklahoma City*, 123 F. 2d, 767, that exemptions of this nature should be liberally construed, is contrary to the theory of the Court of Appeals of this District. See *National Rifle Association v. The District Unemployment Compensation Board*, 134 F. 2d 524.

I am entirely in agreement with the reasoning and decision of the Municipal Court of Appeals of the District of Columbia in the case of *The Better Business Bureau of Washington, D. C. v. The District Unemployment Compensation Board* in holding that the plaintiff corporation was not organized exclusively for educational purposes.

The motion of the plaintiff for a summary judgment will be overruled and the motion of the defendant for a summary judgment will be sustained.

Jennings Bailey, Justice.

[fol. 48] IN UNITED STATES DISTRICT COURT

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT; AND GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT—Filed February 2, 1944

Upon consideration of the motion filed by the plaintiff for summary judgment and of the motion filed by the defendant for summary judgment; and, upon further consideration of the pleadings and the arguments of counsel in open Court, and, being fully advised in the premises, it is, by this Court, this 2nd day of February, 1944,

Adjudged, Ordered and Decreed, as follows:

1. That the motion of the plaintiff for summary judgment be, and the same hereby is, denied.

2. That the motion of the defendant for summary judgment be, and the same hereby is, sustained.

No objection: Jennings Bailey, Justice.

Lyon & Lyon, Attorney for Plaintiff.

IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed April 14, 1944

Notice is hereby given this 14th day of April, 1944, that the Better Business Bureau of Washington, D. C. Inc., the Plaintiff, hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 2nd day of February, 1944 in favor of the United States of America, the defendant, against said Better Business Bureau of Washington, D. C. Inc., the Plaintiff.

Lyon & Lyon, Attorneys for Plaintiff.

[fol. 49] IN UNITED STATES DISTRICT COURT

DESIGNATION OF ERROR—Filed April 14, 1944

Plaintiff claims that the Court erred in rendering judgment for the Defendant in holding that the Plaintiff is not entitled to the exception as an education or scientific institution within the meaning of Sections 801 to 811, Chapter 531, Title VIII, 49 Stat. 636 to 639, of the Federal Social Security Act approved August 14, 1935, and amendment thereto, in that this Plaintiff was not organized and operated exclusively for educational or scientific purposes.

No dispute of facts are involved as there is an "Agreed Statement of Facts" in the Record which the Plaintiff contends shows that it is clearly an educational or scientific institution and was organized and operated exclusively for educational purposes as within the meaning of the Federal Social Security Act of August 14, 1935, and amendments thereto, and this Court erred in holding to the contrary under Sections 801 to 811, Chapter 531, Title VIII, 49 Stat. 636 to 639, of the above mentioned Act.

Lyon & Lyon, Attorneys for Plaintiffs.

IN UNITED STATES DISTRICT COURT

DESIGNATION OF RECORD—Filed April 14, 1944

I. Complaint.

II. Order Extending Time to file Answer of defendant.

III. Answer of Defendant.

IV. Agreed Statement of Facts and Supplemental Stipulation.

V. Plaintiff's Motion for Summary Judgment on Agreed Statement of Facts and Affidavit in Support thereof, under Rule 56, sub-par. C.

[fol. 50] VI. Defendant's Motion for Summary Judgment.

VII. Memorandum Opinion of Justice Jennings Bailey.

VIII. Entry of Judgment for Defendant on February 2nd, 1944.

IX. Notice of Appeal in behalf of Plaintiff.

Lyon & Lyon, Attorneys for Plaintiff.

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[fol. 51] IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, JANUARY TERM, 1945

No. 8765.

BETTER BUSINESS BUREAU OF WASHINGTON, D. C., INC., Appellant,

vs.

UNITED STATES OF AMERICA, Appellee

MINUTE ENTRY—January 19, 1945

Argument commenced by Mr. Rutherford B. H. Lyon, attorney for appellant, continued by Mr. Fred J. Neuland, attorney for appellee, and concluded by Mr. Rutherford B. H. Lyon.



[fol. 52] IN UNITED STATES COURT OF APPEALS, DISTRICT  
OF COLUMBIA

No. 8765

BETTER BUSINESS BUREAU OF WASHINGTON, D. C., INC., Ap-  
pellant,

v.

UNITED STATES OF AMERICA, Appellee

Appeal from the District Court of the United States for the  
District of Columbia

Argued January 19, 1945. Decided February 19, 1945.

*Mr. Rutherford B. H. Lyon*, with whom *Mr. Simon Lyon* was on the brief, for appellant.

*Mr. Fred J. Neuland*, Special Assistant to the Attorney General with whom *Messrs. Samuel O. Clark, Jr.*, Assistant Attorney General, *Sewall Key* and *Robert N. Anderson*, Special Assistants to the Attorney General, *Edward M. Curran*, United States Attorney, and *Daniel B. Maher*, Assistant United States Attorney, were on the brief, for appellee.

Before Groner, Chief Justice, and Miller and Arnold, Associate Justices.

#### OPINION

**ARNOLD, Associate Justice:**

The sole question involved in this appeal is whether Better Business Bureau of Washington, D. C., Inc., is exempt from social security taxes as a corporation organized and operated exclusively for educational or scientific purposes within the meaning of the Social Security Act.<sup>1</sup> Better Business

<sup>1</sup> 49 Stat. 639 (1935), 42 U. S. C. § 1011 (b): "The term 'employment' means any service, of whatever nature, performed within the United States by an employee for his employer, except — . . . (8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual."

Bureau is a non-profit organization whose members are business and professional men of high standing. Its funds come exclusively from membership fees and contributions. The Articles of Incorporation describe its purposes as follows:

“ \* \* \* the object for which it is formed is for the mutual welfare, protection and improvement of business methods among merchants and other persons engaged in any and all business or professions and occupations of every description whatsoever that deal [fol. 53] directly or indirectly with the public at large, and for the educational and scientific advancements of business methods among persons, corporations or associations engaged in business in the District of Columbia so that the public can obtain a proper, clean, honest and fair treatment in its dealings or transactions with such merchants, tradesmen, corporations, associations or persons following a profession and at the same time protecting the interest of the latter classes of businesses to enable such as are engaged in the same to successfully and profitably conduct their business and for the further purpose of endeavoring to obtain the proper, just, fair and effective enforcement of the Act of Congress approved May 29th, 1916, otherwise known as ‘An Act to prevent fraudulent advertising in the District of Columbia’.”

In carrying out these charter purposes the Bureau's work is divided into five subdivisions: (1) the prevention of business fraud; (2) the fighting of fraud; (3) the elevation of business standards by education; (4) the education of the consumer as a buyer; and (5) assistance and cooperation with various local and Federal agencies interested in law enforcement.

The court below entered a summary judgment denying an exemption to Better Business Bureau on the ground it was not organized and operated exclusively for educational purposes. We believe this judgment should be affirmed. Educational programs like that of Better Business Bureau are often of great benefit to the community. But there is no doubt that at least one of the reasons they are carried on by businessmen is that the establishment of better buyer and seller relationship and the elimination of unethical

practices are to the long run commercial profit of the business men who subscribe to them. Such educational campaigns are becoming part of the regular business activities of every industry. Trade associations and chambers of commerce, both local and national, carry them on for mixed commercial and benevolent motives.<sup>2</sup> The difference between a program of adult education carried on by a university and one carried on by a business league cannot be expressed by abstract definition of the educational program of each. The subject matter of the two educational programs may be the same. Nevertheless, there is a difference and it arises out of the underlying commercial motive of a business league and the absence of commercial motive in a university.

Business leagues, chambers of commerce and the like, are omitted from the list of organizations exempt from social security taxes. That this omission is intentional is shown by the fact that such organizations are expressly included among the exemptions given in Section 101 of the Revenue Act.<sup>3</sup> Moreover, in 1939 an amendment was made to the Social Security Act adding new exemptions.<sup>4</sup> It provided that service performed by those in the employ of or [fol. 54] ganizations exempt under Section 101 of the Revenue Act should also be exempt under the Social Security Act if the remuneration for such service does not exceed \$45.00. By necessary implication this means that for employees whose remuneration exceeds that sum business leagues are not exempt from social security taxation.

And finally we are supported in our conclusion by the interpretation put upon the Social Security Act exemption by the Treasury in its regulations made pursuant to the

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<sup>2</sup> See *Memphis Chamber of Commerce v. City of Memphis*, 144 Tenn. 291, 232 S. W. 73 (1921).

<sup>3</sup> The record discloses that appellant, Better Business Bureau, has been exempted from Federal Income Tax under Section 101 (7) which exempts the following organizations: "Business leagues, chambers of commerce, real-estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual; . . ." Revenue Act of 1936, 49 Stat. 1648 (1936).

<sup>4</sup> 53 Stat. 1360 (1939).

terms of that Act.<sup>5</sup> The Treasury defines an exempt educational organization as one designed primarily for the improvement or development of the capabilities of the individual.<sup>6</sup> This applies to such an organization as a university. It does not describe Better Business Bureau. The Treasury regulation goes on to state that "under exceptional circumstances" an educational institution is exempt "whose sole purpose is the instruction of the public," or "whose primary purpose is to give lectures on subjects useful to the individual and beneficial to the community, even though an association of either class has incidental amusement features." Better Business Bureau comes neither within the Treasury definition nor its exception.<sup>7</sup> It certainly has other purposes than lecturing and instruction to the public, and there are no exceptional circumstances about its activities. Indeed, to exempt Better Business Bureau would be to exempt nearly every trade association and chamber of commerce which is engaged in similar activities. And thus we would read back into the Social Security Act an exemption of business leagues which was omitted by Congress.

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<sup>5</sup> "These regulations were prepared by the department charged with the duty of enforcing the Acts . . . . It is the settled rule that the practical interpretation of an ambiguous or doubtful statute that has been acted upon by officials charged with its administration will not be disturbed except for weighty reasons." *Brewster v. Gage*, 280 U. S. 327, 336 (1930); *White v. Winchester Country Club*, 315 U. S. 32, 41 (1942); 1 Mertens, *Law of Federal Income Taxation* (1942), § 3.20.

<sup>6</sup> Regulation 91, Bureau of Int. Rev., 1 Fed. Reg. 1764 (1936).

<sup>7</sup> Cf. *Consumers' Research, Inc. v. Evans*, 128 N. J. L. 95, 24 A. (2d) 390, 392 (1942): "Moreover it does not seem to us that the prosecutor is engaged *exclusively* in scientific and educational work as contemplated by the words of the Statute. Its charter does not so limit it. It is not enough that the work be scientific and educational, as doubtless in a broad sense this work was, but it must be devoted *exclusively* to such objects."

- The Circuit Court of Appeals for the Tenth Circuit has reached a conclusion contrary to ours, one judge dissenting.<sup>9</sup> The Municipal Court of Appeals for the District of Columbia has followed the principles outlined here.<sup>10</sup> In the absence of controlling authority we think this court should follow the Treasury interpretation of the Act. That interpretation is entitled to great weight and should not be set aside except for compelling reasons.<sup>11</sup>

The suggestion that Better Business Bureau is exempt as a corporation organized exclusively for charitable purposes would scarcely deserve consideration were it not for our decision in *International Reform Federation v. District Unemployment Comp. Bd.*<sup>12</sup> In that case, with one judge dissenting, this court exempted from the District of Columbia unemployment compensation tax an organization interested in improving the morals of the community and in lobbying for sumptuary legislation on the ground that these purposes were charitable. While this is a broad interpretation of the term "charitable,"<sup>13</sup> it cannot apply to the case before us for two reasons. In the first place, International Reform Federation had no conceivable business purpose; the reforms which it promoted had nothing to do with the buying and selling of goods. Even if reform be considered charity Better Business Bureau is not organized for that exclusive purpose. In the second place, the Treasury regulation<sup>14</sup> interpreting the Social Security Act, which we feel bound to follow, limits the scope of charitable activities to those whose purpose is the relief of the poor.

Affirmed.

Groner, C. J., concurs in the result.

<sup>9</sup> *Jones v. Better Business Bureau of Oklahoma City, Inc.*, 123 F. (2d) 767 (C. C. A. 10th, 1941).

<sup>10</sup> *Better Business Bureau of Washington, D. C., Inc. v. District Unemployment Comp. Bd.*, 34 A. (2d) 614 (Mun. App. D. C. 1943).

<sup>11</sup> See *supra* note 5.

<sup>12</sup> 76 U. S. App. D. C. 282, 131 F. (2d) 337 (1942).

<sup>13</sup> Cf. *National Rifle Ass'n of America v. Young*, 77 U. S. App. D. C. 290, 134 F. (2d) 524 (1943).

<sup>14</sup> *Supra* note 6.



[fol. 56] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF  
COLUMBIA, JANUARY TERM, 1945

No. 8765

BETTER BUSINESS BUREAU OF WASHINGTON, D. C. Inc., Ap-  
pellant,

vs.

UNITED STATES OF AMERICA, Appellee

Appeal from the District Court of the United States for the  
District of Columbia

JUDGMENT—Filed Feb. 19, 1945

This cause came on to be heard on the transcript of the  
record from the District Court of the United States for the  
District of Columbia, and was argued by counsel.

On consideration whereof, It is now here ordered and  
adjudged by this Court that the order of the said District  
Court appealed from in this cause be, and the same is  
hereby, affirmed.

Per Mr. Justice Arnold.

Dated February 19, 1945.

Mr. Chief Justice Groner concurs in the result.

[fol. 57] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS, DISTRICT OF COLUMBIA

[Title omitted]

DESIGNATION OF RECORD—Filed March 7, 1945

The Clerk will please prepare a certified transcript of  
record for use on petition to the Supreme Court of the  
United States for writ of certiorari in the above-entitled  
cause, and include therein the following:

1. Appendices to briefs of the parties.
2. Minute entry of argument.

3. Opinion.
4. Judgment.
5. This designation.
6. Clerk's certificate.

\* Simon Lyon, R. B. H. Lyon, Attorneys for Appellant.

Copy served on the attorneys for the appellee, this 7th day of March, 1945.

Simon Lyon, R. B. H. Lyon, 701 Evans Building,  
Washington, D. C., Attorneys for Appellant.

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UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF  
COLUMBIA

I, Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia, hereby certify that the foregoing pages numbered from 1 to 57, both inclusive, constitute a true copy of the joint appendix and the proceedings of the said Court of Appeals as designated by counsel for appellant in the case of: Better Business Bureau [fol. 58] of Washington, D. C., Inc., Appellant, vs. United States of America, Appellee, No. 8765, January Term, 1945, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this eighth day of March, A. D. 1945.

Joseph W. Stewart, Clerk of the United States Court  
of Appeals for the District of Columbia. (Seal.)

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[fol. 59] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 30, 1945

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied

the petition shall be treated as though filed in response to such writ.

Endorsed on Cover: File No. 49,542. U. S. Court of Appeals, District of Columbia. Term No. 52. Better Business Bureau of Washington, D. C., Inc., Petitioner, vs. The United States of America. Petition for a writ of certiorari and exhibit thereto. Filed March 29, 1945. Term No. 52, O. T., 1945.

(9134)

FILE COPY

Office - Supreme Court, U. S.

FILED

MAR 29 1945

CHARLES ELMORE OROPLEY  
CLERK

IN THE

**Supreme Court of the United States**

OCTOBER TERM, 1945.

No. **1089** 52

BETTER BUSINESS BUREAU OF WASHINGTON, D. C., INC.,

*Petitioner,*

v.

THE UNITED STATES.

**PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS, DIS-  
TRICT OF COLUMBIA, AND BRIEF IN  
SUPPORT THEREOF.**

SIMON LYON,

R. B. H. LYON,

*Counsel for Petitioner.*

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1945.

No. \_\_\_\_\_

BETTER BUSINESS BUREAU OF WASHINGTON, D. C., INC.,  
*Petitioner,*

v.

THE UNITED STATES

**PETITION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF THE UNITED STATES.**

*To the Honorable, the Chief Justice and Associate Justices  
of the Supreme Court of the United States:*

Your Petitioner, the Better Business Bureau of Washington, D. C. Inc., prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals, District of Columbia, in the above entitled action.

**QUESTION PRESENTED.**

Was the Petitioner, the Better Business Bureau of Washington, D. C. Inc., a corporation organized and operated exclusively for educational or scientific purposes within the meaning of the exemption of the Federal Social Security Act, known as Section 811(b), (8), c. 531, 49 Stat. 620, (42 U. S. C. 1940 ed., Sec. 1011)

**REASONS FOR GRANTING THE WRIT.**

1. The decision of the Appellate Court below in holding that the Petitioner is not entitled to the exemption as an organization organized and operated exclusively for educational or scientific purposes is in direct conflict with the decision of the Circuit Court of Appeals for the 10th Cir-

cuit in the case of *Jones, Collector, v. Better Business Bureau of Oklahoma City, Inc.*, 123 Fed. 2d 767 (C. C. A. 10th, 1941), and other following decisions.

2. The question involved is a novel one in that the decisions of the Circuit Court of Appeals for the 10th Circuit (*supra*), and in the instant case of the United States Court of Appeals, District of Columbia, are the only two decisions dealing directly with this same subject matter at this time, to the best of your Petitioner's knowledge and belief, the question involving the exemption clause of the Federal Social Security Act, Section 811(b) (8), c. 531, 49 Stat. 620, never having been presented to the Supreme Court of the United States for consideration and decision.

3. We contend it is necessary and of general importance that this Federal Statute be clearly and distinctly construed as there are a number of institutions involved and interested in this subject matter, there being approximately eighty-five (85) Better Business Bureaus operating in exactly the same manner throughout the United States, and their status would be determined by such a construction of the statute involved.

4. It is contended that this is a case also of public importance and that as the public is directly involved in its dealings with the Petitioner and other similar institutions throughout the United States, and it therefore necessarily requires that a proper judicial determination of this case be made by this high court.

Wherefore, it is respectfully submitted that this petition for writ of certiorari to review the judgment of the United States Court of Appeals, District of Columbia, in this case should be granted.

Dated at Washington, D. C., March 29, 1945:

SIMON LYON,

R. B. H. LYON,

*Attorneys for Petitioner.*

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1945.

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No.

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BETTER BUSINESS BUREAU OF WASHINGTON, D. C., INC.,

*Petitioner,*

v.

THE UNITED STATES.

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**BRIEF IN SUPPORT OF PETITION FOR WRIT OF  
CERTIORARI.**

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**OPINION OF THE COURT BELOW.**

The Opinion of the United States Court of Appeals, District of Columbia, promulgated February 19, 1945 (R. 52-55).

**JURISDICTION.**

\*The judgment of the Court below was entered on February 19, 1945 (R. 56). The jurisdiction of this Court is invoked under the Act of February 13, 1925, c. 229, p. 1, 43 Stat. 938.

## STATUTES INVOLVED.

### District of Columbia Incorporation Act of Appellant, Act of March 3, 1901, 31 Stat. 1283, c. 854, § 599.

The appellant, the Better Business Bureau of Washington, D. C. Inc., was organized under the Laws of the District of Columbia, (Act of March 3, 1901, 31 Stat. 1283, c. 854, § 599), on the 10th day of August, 1920, commonly known and referred to as articles concerning "benevolent, charitable, educational, literary, musical, scientific, religious, or missionary program, the material part of which reads as follows:

"SEC. 599. Certificate.—Any three or more persons of full age, citizens of the United States, a majority of whom shall be citizens of the District, who desire to associate themselves for benevolent, charitable, educational, literary, musical, scientific, religious, or missionary purposes, including societies formed for mutual improvement or for the promotion of the arts, may make, sign, and acknowledge, before any officer authorized to take acknowledgements of deeds in the District, and file in the office of the recorder of deeds, to be recorded by him, a certificate in writing, in which shall be stated—

First. The name or title by which such society shall be known in law.

Second. The term for which it is organized, which may be perpetual.

Third. The particular business and objects of the society.

Fourth. The number of its trustees, directors, or managers for the first year of its existence." . . .

### Social Security Act Exemption Clause, 49 Stat. 620, c. 531, otherwise known as Sec. 811.

"Sec. 811: When used in this title—

"(b) The term 'employment' means any service, of whatever nature, performed within the United States by an employee for his employer, except—



"(8) Service performed in the employ of a corporation, community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual."

Internal Revenue Code:

**SEC. 1426. DEFINITIONS.**

When used in this subchapter—

(b) *Employment*.—The term 'employment' means any service of whatever nature, performed within the United States by an employee for his employer, except—

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual; (26 U.S.C. 1940 ed., Sec. 1426)."

**District Unemployment Exemption Statute, Sec. 1, par. B, sub-chap. 1, Act of August 28, 1935, 49 Stat. 947.**

The exemption contained in the Federal Social Security Act, *supra*, appears to be identical in terms with the exemption contained in the District of Columbia Unemployment Compensation Act of August 28, 1935, 49 Stat. c. 794, § 3, and amendments thereto, the material part of which reads as follows:

"••• (b) The Term 'employment' means any service, of whatever nature, including employment in interstate commerce, performed after December 31, 1935, within the United States, by any individual under any contract of hire, oral or written, express or implied, so long as the greater part, as determined by the Board under regulations prescribed by it, of the service performed under such contract is performed within the District, except—•••

"\* \* \* (7) service performed in the employ of a corporation, community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual; \* \* \*".

### STATEMENT OF CASE.

The agreed statement of facts filed in this case shows that the appellant, the Better Business Bureau of Washington, D. C., Inc., was organized under the Laws of the District of Columbia, (Act of March 3, 1901, 31 Stat. 1283, c. 854, § 599), on the 10th day of August, 1920, commonly known and referred to as articles concerning "religious, educational and benevolent corporations." The purposes set forth in the Articles of Incorporation are:

"\* \* \* the object for which it is formed is for the mutual welfare, protection and improvement of business methods among merchants and other persons engaged in any and all business or professions and occupations of every description whatsoever that deal directly or indirectly with the public at large, and for the educational and scientific advancements of business methods among persons, corporations or associations engaged in business in the District of Columbia so that the public can obtain a proper, clean, honest and fair treatment in its dealings or transactions with such merchants, tradesmen, corporations, associations or persons following a profession and at the same time protecting the interest of the latter classes of businesses to enable such as are engaged in the same to successfully and profitably conduct their business and for the further purpose of endeavoring to obtain the proper, just, fair and effective enforcement of the Act of Congress approved May 29th, 1916, otherwise known as 'An Act to prevent fraudulent advertising in the District of Columbia.' " (R. 12-13).

The Bureau was not organized for profit and it has no shares of stock. The operation of the Bureau does not inure to the benefit of any private shareholder or individual,

it pays no dividends, and makes no refunds or disbursements to any person interested. Information that it has compiled is available to any one, and it makes no charge for any information furnished. There is no discrimination between members or non-members. It urges the public "Before you invest, investigate," and anyone who takes the trouble to inquire may have all the information that the Bureau has available or can obtain. (R. 13-14)

The money to carry on the work of the Bureau is raised by voluntary subscription or membership fees from interested people. There is no fixed membership fee. One individual or company may contribute \$25.00, while another may contribute \$100.00 or more. Its budget for the years of 1936 to 1941 inclusive differed in various amounts for its complete operation under its charter. The entire sum of the aforesaid budget was raised by contributions and none of it was defrayed by fees or charges made in connection with the service that it rendered to the various individuals, companies or people who took advantage of the slogan "Before you invest, investigate." (R. 13-14)

Its directors are elected annually from the membership, consisting of prominent men from all walks of life. Its officers are elected by the directors. They have nominal duties and are paid no salary. The only paid employees are the Manager or Director and a limited number of employees serving under him. This is an action to recover the amount of taxes paid under the Federal Social Security Act. In carrying out its charter purposes, the Bureau's work is divided roughly into five subdivisions. These are (1) Fraud Prevention, (2) the fighting of Fraud, (3) the elevation of business standards by education thereof, (4) the education of the consumer as a buyer, and (5) furnishing information and aid to various agencies of the Governments of the District of Columbia and the United States. (R. 14)

(1) In the Fraud Prevention work, the purpose is to educate and warn them of plans and schemes of various

types of swindlers. Most of this education is by answering specific inquiries. The Bureau shows the Public what information it has and when the facts are made available to the prospective victim the swindle usually appears rather obvious to even an uneducated person. A substantial part of this fraud prevention work has been in cooperation with newspapers and radio networks who, when the Bureau shows them that the prospective advertiser is a swindler, refuses the advertisement, thus limiting materially the opportunity of the swindler to contact his prospective victim. (R. 14)

(2) In Fraud fighting, general and abstract fraudulent practices are brought to the attention of the public. The education is carried on through newspaper stories, radio talks, bulletins and posters. These are addressed to the public in general and are not in any way limited to the members. In many instances schemes are killed and do not have a chance to occur here because the public were educated to these schemes. (R. 15)

(3) The third class of work which the Bureau attempts to do is the elevation of business standards. The purpose of this is to teach merchants that applying the doctrine of caveat emptor is not good business. In educating merchants that misleading advertising, extravagant claims and price comparisons are not good business, the Bureau, not representing any merchants and having no axe of its own to grind, is in a peculiarly advantageous position in talking with the merchants. The education of merchants to raise their business standards and ethics may be by meetings attended by "chain stores, independents, and every type of merchant" where the follies of dishonest or at least unethical merchandising are pointed out and where a constructive, voluntary plan of honest advertising is advocated, and which frequently results in the merchants adopting "a program and the elimination of comparative prices, all in the interest of public confidence." (R. 15)

(4) The Bureau takes the public as its pupils in its fourth class of educational work. The Bureau believes that the public as a consumer has as much interest in our economic scheme as business men have, and that the public and the business man should work together for a better understanding of each other's problems. This education comes through talks by the manager and assistant manager to groups of individuals, and it is also carried on through the Bureau's bulletins and by newspaper stories and radio addresses.

The consuming public must be educated against fraudulent practices and must be educated to inquire from some reliable, disinterested source before its money is spent or before it becomes involved in any unknown or doubtful proposition. If the consuming public spends its money unwisely, it is a loss not only to the consumer, but to everyone else. (R. 15-16)

(5) In addition to the four primary educational purposes, the Bureau cooperates with the various governmental agencies interested in law enforcement, as follows: United States Federal Trade Commission, United States Post Office, Department of Justice, and certain War Emergency Agencies, etc., Health Department, License Bureau, Insurance Department, etc., of the District of Columbia.

This work does not involve any duplication of these Agencies' services. The Bureau is in an excellent position to give proof to those agencies of schemes which they will want to know about in order to take immediate action to protect the public. The Bureau has nothing whatever to do with the enforcement of the law; that is the duty of the above mentioned various government agencies.

There are some eighty-five other Better Business Bureaus in the United States. The purpose of each Bureau is very much the same and each Bureau exchanges information with other Bureaus, but each is independently operated by local citizens and all the expenses are likewise defrayed by local citizens.



This appellant, the Bureau, has never indulged in any political activities nor does it have anything whatsoever to do with same. (R. 16)

The appellant's position is that it is an educational institution within any commonly accepted definition of "educational" and was and is exempt from taxation under the Federal Social Security Act, Chap. 531, 49 Stat. 620, Sec. 811.

The Appellate Court below refused to accept the Petitioner's contention and accordingly held that it was an organization organized and operated exclusively for educational or scientific purposes within the meaning of the exemption contained in Section 811 of the Federal Social Security Act; *supra*, and therefore not entitled to the relief it sought, hereby subjecting it to the payment of the Social Security Taxes in question.

### **SPECIFICATION OF ERRORS.**

The United States Court of Appeals erred:

1. In rendering judgment for Respondent (appellee in lower court), by holding that your Petitioner is not entitled to the exemption as an organization organized and operated exclusively as an educational or scientific institution within the meaning of Sec. 811 (b) (8) c. 531, 49 Stat. 620 of the Federal Social Security Act approved August 14, 1935, as amended. (R. 49)

2. The decision of the lower court is contrary to the agreed facts, which proves clearly that the Petitioner is an institution organized and exclusively operated for educational or scientific purposes, and was properly incorporated under the Statute of the District of Columbia, created for institutions of this character, Act of March 3, 1901, 31 Stat. 1283, c. 854, § 599 (Brief 6).

3. The Record will show that the Petitioner has met every requirement of the exemption contained in the Federal Social Security Act above cited and therefore entitled to the relief it seeks (R. 12-16).

## ARGUMENT.

### I.

The decision of the appellate court below is holding that the Petitioner is not entitled to the exemption as an organization organized and operated exclusively for educational or scientific purposes is in direct conflict with the decision of the Circuit Court of Appeals for the 10th Circuit in the case of Jones, Collector v. Better Business Bureau of Oklahoma City, Inc., 123 Fed. 2d 769 (C. C. A. 10th, 1941), viz:

*" \* \* \* While the general rule is that tax-exempt statutes are to be construed strictly in favor of the government, the rule does not apply to exemption statutes of the character here involved. Such a statute should be liberally construed so as to further rather than hinder its beneficent purpose. The purpose of this exemption is to encourage religious, charitable, scientific, literary, and educational associations not operating for the profit of any private shareholder or individual.*

Education is defined in Webster's New International Dictionary, Second Edition, as follows: 'The totality of the information and qualities acquired through instruction and training, which further the development of an individual physically, mentally, and morally.' It was defined by the Supreme Court of Nebraska in Ancients, etc. S. R. of Freemasonry v. Board of County Commissioners, 122 Neb. 586, 241 N. W. 93, 96, 81 A. L. R. 1166, as follows: 'Furthermore, lexicographers and the courts agree in defining 'educational' as pertaining to 'education.' The latter word taken in its full sense is a broad, comprehensive term and may be particularly directed to either mental, moral or physical faculties, but in its broadest and best sense it embraces them all, and includes not merely the instructions received at school, college or university, but the whole course of training—moral, intellectual, and physical. \* \* \*

*" \* \* \* It is a well-known fact that educators are now advocating high school training on the subject of intelligent buying.*

*Here, the purpose of the Bureau is to educate the public concerning fraudulent schemes and practices*

*and to enable the members of the public to avoid such practices and to become better and more intelligent buyers, and to inculcate higher ethical standards in business practices and advertising.* Business intercourse is an important activity of everyday life. The inculcating of higher standards and of business ethics on the part of the merchant, inducing the operators of advertising mediums to insist on honest advertising, acquainting the public with fraudulent schemes and practices, and informing the individual how he may avoid such practices and buy more wisely, while within a limited field, are, in our opinion, educational in character.

We, therefore, conclude that the Bureau is within the exemption, and that the judgment below should be affirmed.''. (Italics ours.)

An examination of the records in the *Jones Case* (See Transcript of Record p. 4, 70-72); and that of the Petitioner's (R. 12-16) will show that the activities of these two organizations are identical and that the powers of these respective corporations under which they operated are the same.

Substantiating this contention, we cite in addition to the functions or activities of these two corporations, their respective powers, under which they carried on their activities; the first being that of the *Better Business Bureau of Oklahoma City*, viz:

"To inform and to educate the public by various forms of publicity or otherwise, as to the difference between honest and legitimate advertising and that which is misleading, dishonest, and improper in order to create public confidence in honest and legitimate advertising and honest and legitimate business, and to prevent the public from being misled by persons using unfair advertisements or unfair business methods.

"By all proper means to educate and inform merchants, manufacturers, and other business men as to honest, fair and legitimate advertising and business methods and the discouragement of unfair competition and unfair dealings with the public \* \* \*"

(See: Transcript of Record, p. 4, *Jones case, supra.*)

and powers contained in Petitioner's Articles of Incorporation: (

" \* \* \* the object for which it is formed is for the mutual welfare, protection and improvement of business methods among merchants and other persons engaged in any and all business or professions and occupations of every description whatsoever that deal directly or indirectly with the public at large, and for the educational and scientific advancements of business methods among persons, corporations or associations engaged in business in the District of Columbia so that the public can obtain a proper, clean, honest and fair treatment in its dealings or transactions with such merchants, tradesmen, corporations, associations or persons following a profession and at the same time protecting the interest of the latter classes of businesses to enable such as are engaged in the same to successfully and profitably conduct their business and for the further purpose of endeavoring to obtain the proper, just, fair and effective enforcement of the Act of Congress approved May 29th, 1916, otherwise known as 'An Act to prevent fraudulent advertising in the District of Columbia.' "

It was under the above mentioned powers under which these two organizations were operated exclusively as an educational or scientific institution during the taxing period and their activities were properly within the scope of such powers.

The appellate court erred in holding that Petitioner was a civic institution only and not an educational institution, which seems to be one of the principal reasons for giving judgment in favor of Respondent. This same theory was advanced by the Government before the appellate court for the 10th Circuit in the *Jones case, supra*, and that Court did not give any weight to this argument for the reason it decided, among other things that the Better Business Bureau could be not only a civic institution but also one organized and operated exclusively for educational or scientific purposes. Further, it is a public fact that many civic

institutions do not have the character and scope of operations such as possessed by the Petitioner. The latter has no function as a civic institution (if you would call it such) except to educate the merchant or business man and the public, in order to attain its object, which is done by lectures, radio, conferences, meetings and the printing and distribution of a very large amount of literature. While it may be regarded in a sense as a civic institution, nevertheless the facts prove that it is also clearly an organization organized and operated exclusively for educational purposes as hereinbefore stated.

The narrow and limited construction of the lower court in arriving at its decision is also in conflict and contrary to the principle adopted by the District Court in the *Jones case*, 34 Fed. Supp. 573, decided July, 1940, viz:

" \* \* \* Educational training is not confined to colleges, universities or even the public schools but consists, in the broadest sense, of acquiring information or inspirational suggestions which cause the individual to think and act along proper lines. Certainly, the teaching of honesty, integrity, and truthfulness is the very highest objective of an education." \* \* \* Approved by U. S. Circuit Court of Appeals, 123 Fed. 2d. 767.

The decision in the instant case is also in conflict with the rule laid down by the appellate court in the case of *International Reform Federation v. District Unemployment Compensation Board*, 76 U. S. App. D. C. 272, 131 Fed. 2d 337, on the construction of the exemption clause contained in the District of Columbia Unemployment Act (B. 5-6) which is identical with the exemption contained in the Federal Social Security Act (B. 4-5), as it adopted a more liberal construction with respect to the definition of charitable, educational, and scientific institutions. In this case the court held *inter alia*

" \* \* \* Charity in its legal sense comprises trusts for the relief of poverty, trusts for the advancement of education, trusts for the advancement of religion and



trusts for other purposes beneficial to the community not falling under any of the previous heads. . . .

The lower court in differentiating between the case at bar and the *International Reform Federation case, supra*, lost sight of the fact that there are numerous forms of educational institutions due to the march of time and because the appellant in the *International Reform Federation case, supra*, was different in its character from that of the Petitioner, the reasoning in arriving at its decision in the *International Reform Federation case* could not be applied to the character of an institution such as that of the Petitioner, when in fact today there are numerous kinds of educational institutions operating which are not religious or otherwise charitable in their very nature, but serve the public for the advancement and benefit as its only object. This latter class have received the benefit of a favorable construction of exemption acts such as in the above case and such rule of construction has been followed by numerous courts throughout the country, among which we cite the following in addition to the *Jones case* and *Petitioner's case, supra*:

*W. Trinidad, Insular Collector, v. Sagrada Orden De Predicadores, etc.*, 263 U. S. 578, 68 L. Ed. 458.

*Hassett, Collector, v. Associated Hospital Service Corporation of Massachusetts*, 125 Fed. 616.

*Slocum et al. v. Bowers*, 15 Fed. 2d 400-403.

*St. Louis Union Trust Company et al. v. Burnett*, 59 Fed. 2d 922-9.

*Missouri Historical Society v. Academy of Science*, 94 Mo. 459, 8 S. W. 346.

*Southeastern Fair Association v. U. S.*, 52 Fed. Supp. 219.

*Oklahoma State Fair and Exposition v. Jones, Collector of Internal Revenue*, 44 Fed. Supp. 630-2.

## II.

**The Question involved appears to be a novel one.**

The Petitioner operating as a Better Business Bureau, as well as other Better Business Bureaus throughout the United States, are organizations operating for the education of business men of every character and the public and are, we might say, organizations created under the corporation laws throughout the United States of recent time as the result of the evolution of business.

These institutions have all been created within the past thirty (30) years, and therefore their rights under the law, so far as the imposition of duties or taxes, should be construed in the legal manner such as has been prescribed by the appellate courts in the case of *Better Business Bureau v. Jones, Collector*, and *International Reform Federation v. District Unemployment Compensation Board, supra*.

Congress has met this modern method by broadening the exemptions in the Federal Social Security, Unemployment and other taxing laws as will be readily perceived by the exemptions contained in the above mentioned laws, hereinbefore set out (B. 4-6).

Further we contend that the exemption clause of the Federal Social Security Act in question (which is legislation of modern times and not an old act) here does not contain any ambiguity. This Court has decided many times that an adverse construction of a Federal Act by any governmental agency shall not prevail where the Statute in question speaks clearly, such as in the case at bar, therefore we think that the appellate court erred in its decision denying this petitioner the relief it seeks, in holding that such adverse departmental construction shall prevail. This high court has on many occasions, where such a point was involved, set aside such adverse construction as being unreasonable incorrect, and unfair to the taxpayer. The decisions of this court in favor of the litigant seeking relief from such adverse departmental construction are clear and numerous

and it would be only taking up unnecessary time of this court to cite them. Especially is the decision of the lower court in this case on this point in error in view of the clearness of the statute in question giving the relief sought by the Petitioner, which relief we think is justified by the facts in this case.

### III.

**The case involves a matter of general importance.**

The construction of this Federal Statute by this high Court is necessary as it is a matter of general importance that the same be clearly and distinctly construed so that the ambiguity created by the conflicting decisions of the appellate courts in the *Jones* and *instant* case be eliminated as there are a number of similar institutions involved and interested in this subject matter throughout the United States, there being approximately eighty-five (85) Better Business Bureaus operating in exactly the same manner throughout this country and their status should be clearly and definitely determined by a proper construction of the Statute involved.

### IV.

**It necessarily follows that this case is of public importance.**

It is contended that this is a case also of public importance and that the public interest and that of the employees of these institutions are directly involved in the transaction of business with the Petitioner and other similar institutions throughout the United States and it therefore urgently requires that a proper judicial determination of this case be made by this high court.

**CONCLUSION.**

For the following reasons, it is respectfully submitted  
that this Petition should be granted.

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CHARLES ELMORE DROPLEY

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1945.

\_\_\_\_\_  
No. 52.  
\_\_\_\_\_

BETTER BUSINESS BUREAU OF WASHINGTON, D. C., INC.,  
*Petitioner.*

v.

THE UNITED STATES OF AMERICA.

\_\_\_\_\_  
**BRIEF FOR PETITIONER.**  
\_\_\_\_\_

✓ SIMON LYON,

⊙ R. B. H. LYON,

*Counsel for Petitioner.*



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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1945.

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BETTER BUSINESS BUREAU OF WASHINGTON, D. C., Inc.,  
*Petitioner,*

v.

THE UNITED STATES OF AMERICA.

—  
**BRIEF FOR PETITIONER.**  
—

**OPINION OF THE COURT BELOW.**

(R. 42-46.)

**JURISDICTION.**

The judgment of the Court below was entered on February 19, 1945 (R. 47), the Court granting Writ of Certiorari March 15, 1945 (R. 48-49). The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925, c. 229, p. 1, 43 Stat. 938.

## STATUTES INVOLVED.

### District of Columbia Incorporation Act of Petitioner, Act of March 3, 1901, 31 Stat. 1283, c. 854, § 599.

The petitioner, the Better Business Bureau of Washington, D. C., Inc., was organized under the Laws of the District of Columbia (Act of March 3, 1901, 31 Stat. 1283, c. 854, § 599), on the 10th day of August, 1920, commonly known and referred to as articles concerning "benevolent, charitable, educational, literary, musical, scientific, religious, or missionary program, the material part of which reads as follows:

"SEC. 599. Certificate.—Any three or more persons of full age, citizens of the United States, a majority of whom shall be citizens of the District, who desire to associate themselves for benevolent, charitable, educational, literary, musical, scientific, religious, or missionary purposes, including societies formed for mutual improvement or for the promotion of the arts, may make, sign, and acknowledge, before any officer authorized to take acknowledgements of deeds in the District, and file in the office of the recorder of deeds, to be recorded by him, a certificate in writing, in which shall be stated—

First. The name or title by which such society shall be known in law.

Second. The term for which it is organized, which may be perpetual.

Third. The particular business and objects of the society.

Fourth. The number of its trustees, directors, or managers for the first year of its existence." \* \* \*

### Social Security Act Exemption Clause, 49 Stat. 620, c. 531, otherwise known as Sec. 811.

"Sec. 811. When used in this title—

"(b) The term 'employment' means any service, of whatever nature, performed within the United States by an employee for his employer, except—



"(8) Service performed in the employ of a corporation, community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual."

Internal Revenue Code:

SEC. 1426. DEFINITIONS.

When used in this subchapter—

• • •

(b) *Employment*.—The term 'employment' means any service of whatever nature, performed within the United States by an employee for his employer, except—

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual (26 U. S. C. 1940 ed., Sec. 1426)."

Treasury Regulations 91, promulgated under Title VIII of the Social Security Act:

ART. 12. *Religious, charitable, scientific, literary, and educational organizations and community chests*.—Services performed by any employee of an organization of the class specified in section 811 (b) (8) are excepted:

For the purpose of the exception the nature of the service is immaterial; the statutory test is the character of the organization for which the service is performed.

In all cases, in order to establish its status under the statutory classification, the organization must meet two tests:

(1) It must be organized and operated exclusively for one or more of the specified purposes; and

(2) Its net income must not inure in whole or in part to the benefit of private shareholders or individuals.

An educational organization within the meaning of section 811 (b) (8) of the Act is one designed primarily for the improvement or development of the capabilities of the individual, but, under exceptional circumstances, may include an association whose sole purpose is the instruction of the public, or an association whose primary purpose is to give lectures on subjects useful to the individual and beneficial to the community, even though an association of either class has incidental amusement features. An organization formed, or availed of, to disseminate controversial or partisan propaganda or which by any substantial part of its activities attempts to influence legislation is not an educational organization within the meaning of section 811 (b) (8) of the Act.

The provisions of Section 402.215, Treasury Regulations 106, promulgated under the Federal Insurance Contributions Act (Sections 1400-1431 of the Internal Revenue Code) are substantially the same as those of Article 12, Treasury Regulations 91.

**District Unemployment Exemption Statute, Sec. 1, par. B, sub-chap. 1, Act of August 28, 1935, 49 Stat. 947.**

The exemption contained in the Federal Social Security Act, *supra*, appears to be identical in terms with the exemption contained in the District of Columbia Unemployment Compensation Act of August 28, 1935, 49 Stat. c. 794, § 3, and amendments thereto, the material part of which reads as follows:

" \* \* \* (b) The Term 'employment' means any service, of whatever nature, including employment in interstate commerce, performed after December 31, 1935, within the United States, by any individual under any contract of hire, oral or written, express or implied, so long as the greater part, as determined by the Board under regulations prescribed by it, of the service performed under such contract is performed within the District, except— \* \* \*

" \* \* \* (7) service performed in the employ of a corporation, community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual; \* \* \*,"

### **STATEMENT OF CASE.**

The agreed statement of facts filed in this case shows that the petitioner, the Better Business Bureau of Washington, D. C., Inc., was organized under the Laws of the District of Columbia (Act of March 3, 1901, 31 Stat. 1283, c. 854, §599), on the 10th day of August, 1920, commonly known and referred to as articles concerning "religious, educational and benevolent corporations." The purposes set forth in the Articles of Incorporation are:

" \* \* \* the object for which it is formed is for the mutual welfare, protection and improvement of business methods among merchants and other persons engaged in any and all business or professions and occupations of every description whatsoever that deal directly or indirectly with the public at large, and for the educational and scientific advancements of business methods among persons, corporations or associations engaged in business in the District of Columbia so that the public can obtain a proper, clean, honest and fair treatment in its dealings or transactions with such merchants, tradesmen, corporations, associations or persons following a profession and at the same time protecting the interest of the latter classes of businesses to enable such as are engaged in the same to

successfully and profitably conduct their business and for the further purpose of endeavoring to obtain the proper, just, fair and effective enforcement of the Act of Congress approved May 29th, 1916, otherwise known as 'An Act to prevent fraudulent advertising in the District of Columbia.' " (R. 9-10)

The Bureau was not organized for profit and it has no shares of stock. The operation of the Bureau does not inure to the benefit of any private shareholder or individual, it pays no dividends, and makes no refunds or disbursements to any person interested. Information that it has compiled is available to any one, and it makes no charge for any information furnished. There is no discrimination between members or non-members. It urges the public "Before you invest, investigate," and anyone who takes the trouble to inquire may have all the information that the Bureau has available or can obtain. (R. 10)

The money to carry on the work of the Bureau is raised by voluntary subscription or membership fees from interested people. There is no fixed membership fee. One individual or company may contribute \$25.00, while another may contribute \$100.00 or more. Its budget for the years of 1936 to 1941 inclusive differed in various amounts for its complete operation under its charter. The entire sum of the aforesaid budget was raised by contributions and none of it was defrayed by fees or charges made in connection with the service that it rendered to the various individuals, companies or the public who took advantage of its activities. (R. 10-11)

Its directors are elected annually from the membership, consisting of prominent men from all walks of life. Its officers are elected by the directors. They have nominal duties and are paid no salary. The only paid employees are the Manager or Director and a limited number of employees serving under him. This is an action to recover the amount of taxes paid under the Federal Social Security Act. In carrying out its charter purposes, the Bureau's

work is divided roughly into five subdivisions. These are (1) Fraud Prevention, (2) the fighting of Fraud, (3) the elevation of business standards by education thereof, (4) the education of the consumer as a buyer, and (5) furnishing information and aid to various agencies of the Governments of the District of Columbia and the United States. (R. 11)

(1) In the Fraud Prevention work, the purpose is to educate and warn them of plans and schemes of various types of swindlers. Most of this education is by answering specific inquiries. The Bureau shows the Public what information it has and when the facts are made available to the prospective victim the swindle usually appears rather obvious to even an uneducated person. A substantial part of this fraud prevention work has been in cooperation with newspapers and radio networks who, when the Bureau shows them that the prospective advertiser is a swindler, refuses the advertisement, thus limiting materially the opportunity of the swindler to contact his prospective victim. (R. 11)

(2) In Fraud fighting, general and abstract fraudulent practices are brought to the attention of the public. The education is carried on through newspaper stories, radio talks, bulletins and posters. These are addressed to the public in general and are not in any way limited to the members. In many instances schemes are killed and do not have a chance to occur here because the public were educated to these schemes. (R. 11)

(3) The third class of work which the Bureau attempts to do is the elevation of business standards. The purpose of this is to teach merchants that applying the doctrine of caveat emptor is not good business. In educating merchants that misleading advertising, extravagant claims and price comparisons are not good business, the Bureau, not representing any merchants and having no axe of its own to grind, is in a peculiarly advantageous position in talking



with the merchants. The education of merchants to raise their business standards and ethics may be by meetings attended by "chain stores, independents, and every type of merchant" where the follies of dishonest or at least unethical merchandising are pointed out and where a constructive, voluntary plan of honest advertising is advocated, and which frequently results in the merchants adopting "a program and the elimination of comparative prices, all in the interest of public confidence." (R. 11-12)

(4) The Bureau takes the public as its pupils in its fourth class of educational work. The Bureau believes that the public as a consumer has as much interest in our economic scheme as business men have, and that the public and the business man should work together for a better understanding of each other's problems. This education comes through talks by the manager and assistant manager to groups of individuals, and it is also carried on through the Bureau's bulletins and by newspaper stories and radio addresses.

The consuming public must be educated against fraudulent practices and must be educated to inquire from some reliable, disinterested source before its money is spent or before it becomes involved in any unknown or doubtful proposition. If the consuming public spends its money unwisely, it is a loss not only to the consumer, but to everyone else. (R. 12)

(5) In addition to the four primary educational purposes, the Bureau cooperates with the various governmental agencies interested in law enforcement, as follows: United States Federal Trade Commission, United States Post Office, Department of Justice, and certain War Emergency Agencies, etc., Health Department, License Bureau, Insurance Department, etc., of the District of Columbia.

This work does not involve any duplication of these Agencies' services, but aids in their efficient operation. The Bureau is in an excellent position to give proof to those agencies of schemes which they will want to know about in order to take immediate action to protect the public. The

Bureau has nothing whatever to do with the enforcement of the law; that is the duty of the above mentioned various government agencies.

There are some eighty-five other Better Business Bureaus in the United States.. The purpose of each Bureau is very much the same and each Bureau exchanges information with other Bureaus, but each is independently operated by local citizens and all the expenses are likewise defrayed by local citizens.

This petitioner has never indulged in any political activities nor does it have anything whatsoever to do with same. (R. 12-13)

The petitioner's position is that it is an educational institution within any commonly accepted definition of "educational" and was and is exempt from taxation under the Federal Social Security Act, Chap. 531, 49 Stat. 620, Sec. 811.

The Appellate Court below refused to accept the Petitioner's contention and accordingly held that it was not an organization organized and operated exclusively for educational or scientific purposes within the meaning of the exemption contained in Section 811 of the Federal Social Security Act, *supra*, and therefore not entitled to the relief it sought, thereby subjecting it to the payment of the Social Security Taxes in ques. n.

### **SPECIFICATION OF ERRORS.**

The United States Court of Appeals erred:

1. In rendering judgment for Respondent (appellee in lower court), by holding that your petitioner is not entitled to the exemption as an organization organized and operated exclusively as an educational or scientific institution within the meaning of Sec. 811 (b) (8) c. 531, 49 Stat. 620 of the Federal Social Security Act approved August 14, 1935, as amended. (R. 42-46)

2. The decision of the lower court is contrary to the agreed facts, which proves clearly that the petitioner is an institution organized and exclusively operated for educational or scientific purposes, and was properly incorporated under the Statute of the District of Columbia, created for institutions of this character, Act of March 3, 1901, 31 Stat. 1283, c. 854, § 599. (B. 2)

3. The Record will show that the petitioner has met every requirement of the exemption contained in the Federal Social Security Act above cited and therefore entitled to the relief it seeks. (R. 9-14)

### **STATEMENT OF THE POINT INVOLVED.**

There is no dispute of fact involved in this case; the sole question to be decided by this Court is one of law, "is the petitioner, on the facts in this case, a corporation organized and operated exclusively for educational or scientific purposes and entitled to the benefit of the exemption from Federal Social Security Taxes contained in Section 811 of the Federal Social Security Tax Law, of August 14, 1935"?

### **SUMMARY OF ARGUMENT.**

Exemption is claimed on behalf of petitioner from taxation under the provisions of the Exempting clause in Chap. 531, 49 Stat., 620, Section 11 (of the Federal Social Security Act) as it is contended that the petitioner was organized and operated exclusively as an Educational Institution during the taxing period.

Construction of the Statute by this Court should be such as will give the petitioner the benefit of the Exemption Clause of Chap. 531, 49 Stat., 620 (Section 11 of the Federal Social Security Act), as the definition of the term "Educational" as defined by the late decisions of the Courts is of such a nature that will justify awarding the exemption to petitioner, whether it is a strict or liberal construction of the verbiage contained in the act:

- (a) On the Taxing Statute.
- (b) On Departmental Construction.
- (c) On the legal definition of Charitable and Educational.

The petitioner is an Educational or Scientific Institution and operated exclusively as such within the meaning of the law, and is a conclusion justified by the agreed statement of facts and supporting authorities.

Comment on the decision of the lower court denying the petitioner the exemption sought as an "Educational or Scientific" Institution shows, we believe, that such lower court is in error in rendering judgment for the defendant as the result of adverse construction of the exemption clause of the taxing act in question.

### **ARGUMENT.**

#### **Exemption is Claimed from Taxation Under the Federal Social Security Act.**

The pertinent section, that is Chapter 531, 49 Stat. 620, Sec. 811, reads as follows:

"When used in this title, \* \* \*

"(b) The term 'employment' means any service of whatever nature, performed, within the United States by an employee for his employer, except \* \* \*

"(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual."

With respect to the above exemption contained in the Social Security Act aforesaid, Treasury Regulation 91 was promulgated thereunder. (B. 3-4)

It appears to be clear that the Federal Social Security Act and the regulation promulgated thereunder proposes three (3) tests: it must be organized and operated exclusively for one of the exempt purposes—in this instance, educational or scientific. Reference to the charter purposes hereinbefore quoted shows that the purpose for which the Bureau was organized was educational and scientific, and a reading of the statement of facts agreed upon in this case shows that it is operated exclusively for the purpose for which it was chartered. The second test is that there must be no benefit to private shareholders or individuals. The third test is no substantial part of the activities shall be carrying on propaganda, or otherwise attempting, to influence legislation. The facts in the case clearly show that these tests have been satisfactorily met and further that the petitioner has indulged in no political activities directly or indirectly whatsoever, and is therefore entitled to the relief it seeks.

### **CONSTRUCTION.**

We contend that the Social Security exemption clause in question here is clear and unambiguous, and that a proper application of the facts in this case to such exemption clause will give the relief sought by the petitioner in the instant case.

Supporting this contention are the following decisions of the Courts:

#### **(a) On the Taxing Statute.**

In *Wellman v. Bethea*, 243 F. 222, it was held:

“In construing a statute, the court must ascertain the intention of the legislature but such intention must be ascertained from the words used in the statute and the subject-matter to which it relates.”

As Judge Hand said in *Slocum et al. v. Bowers*, District Court, 15 F. (2d) 400-403:

“ \* \* \* The policy of exempting these corporations is firmly established and has been continuously expand-



ing ever since the system of income taxation was adopted. The statute should be read, if possible, in such a way as to carry out this policy and not to make the result turn on accidental circumstance or legal technicalities." \* \* \*

*Union & New Haven Trust Company v. Eaton*, 20 F. (2d) 421, approved in *U. S. v. Proprietors of Social Law Library*, 102 F. (2d) 481—

" \* \* \* (3) The rule of strict construction is in the interest of public policy, and when a higher public policy dictates a more liberal attitude, an exception will be found. Bequests for public purposes operate in aid of good government; they perform by private means what ultimately would have to be done at public expense. In such cases, exemption from taxation is not a matter of grace or favor; is rather an act of public justice. The reason for the rule of narrow scrutiny does not apply to such cases. \* \* \*"

*United States v. Rosenblum Truck Lines, Inc.*, 315 U. S. 50, 86 L. ed. 671, 62 S. Ct. 445:

" \* \* \* Where the plain meaning of words used in a statute produces an unreasonable result, plainly at variance with the policy of the legislation as a whole, the purpose of the statute rather than the literal words should prevail. \* \* \*"

#### (b) On Departmental Construction.

*Neuberger v. Commissioner of Internal Revenue*, 311 U. S. 83, 85 L. ed. 58, 61 S. Ct. 97:

" \* \* \* Although rulings of the Treasury Department are entitled to great weight in the construction of a Federal income tax statute, they cannot narrow the scope of the statute when Congress has plainly intended otherwise. \* \* \*"

*United States v. Pleasants*, 305 U. S. 357-363, 83 L. ed. 217-221, 59 S. Ct. 795:

" \* \* \* We observed in the Bliss Case that the exemption of income devoted to charity and the reduction of the rate of tax on capital gains 'were liberalizations of the law in the taxpayer's favor, were begotten from motives of public policy, and are not to be narrowly construed.'" That observation is equally pertinent here.

"The administrative construction invoked by the Government has not been of a sufficiently consistent character to afford adequate support for its contention.  
\* \* \*"

Regulations issued by a governmental department to which the administration of a statute is committed may not extend the statute or modify its provisions.

*Texas & Pacific Railway Company v. United States*,  
289 U. S. 627, 77 L. ed. 1410, 53 S. Ct. 768.

*Koshland v. Helvering*, 298 U. S. 441, 80 L. ed. 1268,  
56 S. Ct. 767.

*M. E. Blatt Company v. United States*, 305 U. S. 267,  
83 L. ed. 167, 59 S. Ct. 186.

The rule that a definite settled administrative construction of the statute is entitled to the highest respect does not apply in cases where the construction is not doubtful or in other words executive construction cannot change the unambiguous language of a statute.

*Louisville & Nashville Railroad Company v. United States*, 282 U. S. 740, 75 L. Ed. 672, 51 S. Ct. 297.

*Norwegian Nitrogen Products Company v. United States*, 288 U. S. 294, 77 L. ed. 796, 53 S. Ct. 350.

*Alaska Steamship Company v. United States*, 290 U. S. 256, 78 L. ed. 302, 54 S. Ct. 159.

And quoting from: *Haggar Company v. Helvering*, 308 U. S. 389, 84 L. ed. 340, 60 S. Ct. 337—

" \* \* \* A Treasury regulation which amounts to a compliance with the supposed command of a statute will not be followed by the court in construing the stat-

ute, where the regulation flies in the face of the purposes of the statute and the plain meaning of its words does not embody the results of any specialized departmental knowledge or experience, and no one will be prejudiced by its rejection. \* \* \*

It has been decided and settled by the courts that a departmental construction which does violence to the exemption clause of the statute, as contended in the case at bar, is unreasonable and deprives institutions of this character of the benefit of the exemption, which we think it was clearly the intention of Congress to give, in fact mandatory on account of the clear and unambiguous wording of the exemption clause of the statute.

**(c) On the Legal Definition of Charitable and Educational.**

The term "charitable" is a generic term and includes literary, religious, scientific and educational institutions. As the Court said in *Missouri Historical Society v. Academy of Science*, 94 Mo. 459, 8 S. W. 346, cited in *Simmons et al. v. Fidelity National Bank and Trust Company of Kansas City, et al.*, 8th Cir., 64 F. (2d) 602:

"Any gift not inconsistent with existing laws, which is promotive of science, or tends to the education, enlightenment, benefit, or amelioration of the condition of mankind, or the diffusion of useful knowledge, or is for the public convenience, is a charity \* \* \* (94 Mo. 459, 8 S. W. 346-8)

The accepted rule of law is that: activities of a charitable, scientific or educational corporation are "exclusively" for such purposes when those activities are incidental, adhere to, advance and are mediate to the primary purpose.

*W. Trinidad, Insular Collector, v. Sagrada Orden de Predicadores, etc.* (1924), 263 U. S. 578, 68 L. ed. 458.

*Slee v. Commissioner of Internal Revenue* (C. C. A. 2, 1930), 42 F. (2d) 184.

*Girard Trust Co. et al. v. Commissioner of Internal Revenue* (C. C. A. 3, 1941), 122 F. (2d) 108; 41 B. T. A. 157.

*Faulkner v. Commissioner of Internal Revenue* (C. C. A. 1, 1940), 112 F. (2d) 987; 41 B. T. A. 875.

The Court below gave too restricted a meaning to the term "educational purposes".

Education on economic subjects is not beyond the statutory exemption and educational activities need not be confined to any particular kind of education nor restricted to any particular class of persons.

*Jones, Collector of Internal Revenue v. Better Business Bureau of Oklahoma City, Inc.* (C. C. A. 10, 1941), 123 F. (2d) 767 @ p. 769.

*Cochran v. Commissioner of Internal Revenue* (C. C. A. 4, 1935), 78 F. (2d) 176.

*Leubuscher v. Commissioner of Internal Revenue* (C. C. A. 2, 1932), 54 F. (2d) 998.

*Weyl v. Commissioner of Internal Revenue* (C. C. A. 2, 1931), 48 F. (2d) 811.

Also see to the same effect *St. Louis Union Trust Company et al. v. Burnett*, 8th Circuit, 59 F. (2d) 922-9.

The Court below gave too restricted a meaning to the word "charitable" which includes the field of "educational."

The statutory exemption includes the purpose, "charitable or educational."

"Charity", said the Illinois Supreme Court in *The People ex rel. Albert N. Nelson, County Collector v. The Rockford Maconic Temple Building Association* (1932), 348 Ill. 567, at p. 572, "may be applied to almost anything that tends to promote the well doing and well being of social man." See also: *The People ex rel. Harry W. Greer, County Collector v. The Thomas Walters Chapter of the Daughters of the American Revolution* (1924), 311 Ill. 304; *Elizabeth C. Ould v. The Washington Hospital for Foundlings* (1877), 95 U. S. 303, 24 L. ed. 450.

The United States Circuit Court of Appeals for the First Circuit (*United States v. Proprietors of Social Law Library* (C. C. A. 1, 1939), 102 F. (2d) 481) in construing the Federal exemption provisions of the Revenue Act of 1934 (p. 483):

"Any gift, not inconsistent with existing laws, which is promotive of science, or tends to education, enlightenment, benefit or amelioration of the condition of mankind, or diffusion of useful knowledge, or is for public convenience, is a charity." \* \* \*

*International Reform Federation v. District Unemployment Compensation Board* (U. S. C. A. D. C. 1942), 131 F. (2d) 337 at p. 339,

"\* \* \* That Congress had in mind these broader definitions is confirmed by the words used in the Act, for by its terms it embraces religious, charitable, scientific, literary, or educational corporations, thus including within the exemption clause every non-profit organization designed and operating for the benefit and enlightenment of the community." \* \* \*

In a legal sense the term "charity" is not confined to mere almsgiving or to the relief of poverty and distress, but embraces the improvement and happiness of man.

*The People ex rel. L. R. Wagner, County Collector, v. The Freeport Masonic Temple, Inc.* (1931), 347 Ill. 180;

*The Congregational Sunday School and Publishing Society v. Board of Review* (1919), 290 Ill. 108;

*The School of Domestic Arts and Science v. P. J. Carr, County Collector* (1926), 322 Ill. 562.

The best late definition we have been able to find anywhere of an educational organization is that contained in Judge Vaught's opinion in the case of *Better Business Bureau of Oklahoma City, Inc. v. Jones, Collector*, 34 Fed. Supp. 573, decided July, 1940:



“ \* \* \* Educational training is not confined to colleges, universities or even the public schools but consists, in the broadest sense, of acquiring information or inspirational suggestions which cause the individual to think and act along proper lines. Certainly, the teaching of honesty, integrity, and truthfulness is the very highest objective of an education.” \* \* \* Approved by U. S. Circuit Court of Appeals, 123 F. (2d) 767.

The lower court in the previous case of the *International Reform Federation v. District Unemployment Compensation Board* (131 F. (2d) 337; 71 W. L. R. 43), clearly defines “educational” for taxation exemption as follows:

“ \* \* \* Charity in its legal sense comprises trusts for the relief of poverty, trusts for the advancement of education, trusts for the advancement of religion and trusts for other purposes beneficial to the community not falling under any of the previous heads. \* \* \* ”

The late decisions of the Courts certainly show a tendency, if anything, to broaden the definition of an “educational institution,” to meet the existing social conditions.

**THE BETTER BUSINESS BUREAU OF WASHINGTON, D. C., IS AN EDUCATIONAL INSTITUTION WITHIN THE MEANING OF THE EXEMPTION CONTAINED IN THE FEDERAL SOCIAL SECURITY ACT.**

The petitioner could only incorporate under Section 599 of the Code of Law of the District of Columbia on account of it being an educational and scientific institution and were it only a civic institution as decided by the lower court, such as a Board of Trade or any other strictly civic business organization, it would have been required to incorporate under Section 701 of sub-chap. 8 of the Code of Law of the District of Columbia (R. S. D. C. Secs. 605-612, 617; Comp. Stat. D. C. pp. 133 et seq.), or other sections of the Code of Law of the District of Columbia than that un-

der which it was created as previously stated herein, applicable to petitioner.

The facts in the case show that the petitioner's activities under its corporate powers places it clearly in a class of corporations organized and operated exclusively to the furtherance of educational and scientific purposes and education on economic or business questions promoted by it which was directly in furtherance of educational and scientific purposes exclusively.

It also appears that an error was committed by the lower court in not holding that Regulation 91 (M. 3-4) promulgated by the Commissioner of Internal Revenue shortly after the passing of the Social Security Act (Sec. 811) (B. 2-3) was indefinite and incomplete with respect to giving the petitioner the benefit of the exemption clause aforesaid, for the reason we think it will be clearly determined upon reading such Regulation, as it does not specifically preclude this petitioner or like institutions from the benefit of the exemption, although it is, we claim, indefinite and does not take into consideration educational or scientific institutions of a modern character or practice which meet the present day conditions or requirement of public policy.

It should be borne in mind that this Regulation 91 aforesaid is the only one promulgated and this has been the first opportunity to test the propriety, reasonableness, and practicability of the same so far as petitioner and other similar institutions are concerned, and especially is this material in view of the fact as shown by decisions of the courts that the holdings or decisions of the Commissioner of Internal Revenue with respect to exemptions of charitable, educational or scientific institutions have been inconsistent or mixed in their character and have led the decisions of the Federal Courts to the inevitable conclusion that the line of construction adopted in many instances were erroneous and incorrect, which appears to have resulted in the mistaken theory adopted by the lower court in this case, in view of the undisputed facts.

The methods of the Bureau are purely corrective and preventive, and its educational work consists of teaching the public so that they may not become victims of plans or schemes intended to separate them from their money and its work is in no sense punitive or penal as it has nothing whatever to do with the enforcement of the law or any police activities.

Further, the education of the merchant, banker or business man is one of its important activities, teaching how to avoid misleading advertising and also teaching the business man the conduct of clean business methods and standards, which has proven of immense value to him and the public.

The educational program of this Bureau has proven of very great value to various agencies of both the District and Federal Government in furnishing aid and information to enable these agencies to carry on their work effectively, which also inures to the benefit of the public.

The Bureau indulges in no political activity whatsoever, either directly or indirectly. To the contrary, it serves its members and the entire public free from any persuasion, whether it be political, religious, racial, or whatnot.

The Bureau has no right to regulate business and it has no authority so to do. It does attempt, however, to persuade by education, merchants and other business men to improve their business ethics and methods and not to mislead the public by false or misleading advertisements, price comparisons or mis-statements as to the quality or type of merchandise being offered for sale, or other erroneous practices in the field in which they are engaged. If the merchant or business man insists upon doing these improper things all the Bureau will do is to give such matters publicity and educate the public to the fact that certain merchants or business men are attempting to take advantage of them.

We can find no cases involving Social Security tax as applying to educational institutions except the case of *Jones*,

Collector *v. Better Business Bureau of Oklahoma City, Inc.*, *supra*, but there are numerous cases exempting charitable, educational and scientific institutions from different forms of Federal and State taxation, such as unemployment, income, estate and inheritance, and excise taxes, which we believe the Court are familiar with and need no citation here of them.

**THE DECISIONS OF THE COURTS SHOW THE PETITIONER, THE BETTER BUSINESS BUREAU OF WASHINGTON, D. C., INC., IS AN EDUCATIONAL INSTITUTION, EXEMPT FROM FEDERAL SOCIAL SECURITY TAXATION.**

The leading and important case which involved the refund of a "Social Security Tax" on the ground that the corporation was exempt as an educational institution and therefore exempt from taxation and we think controlling here, and in favor of the petitioner in the case at bar, is that of *Jones, Collector v. Better Business Bureau of Oklahoma City, Inc.*, 123 F. (2d) 767, decided October 31, 1941 by the United States Circuit Court of Appeals for the 10th Circuit. In fact this Appellate Court has decided that a Better Business Bureau (as they all operate throughout the United States practically in the same manner and method and under practically the same powers) "is an educational institution."

In the *Jones case* the appellee is the Better Business Bureau of Oklahoma City, Inc., and is a corporation or institution identical with that of the petitioner in this case and some eighty others throughout the United States. The record in the *Jones case* will show clearly it was organized exclusively for the same purposes as that of the petitioner here, that is "educational."

The Court found among other things, the following facts:

" . . . To inform and to educate the public by various forms of publicity or otherwise, as to the difference between honest and legitimate advertising and that which

is misleading, dishonest and improper in order to create public confidence in honest and legitimate advertising and honest and legitimate business, and to prevent the public from being misled by persons using unfair advertisements or unfair business methods.

"By all proper means to educate and inform merchants, manufacturers and other business men as to honest, fair and legitimate advertising and business methods and the discouragements of unfair competition and unfair dealings with the public. \* \* \*

"\* \* \* The Bureau carries on a continuous campaign of fraud prevention work. It warns the public against fraudulent plans and schemes. It endeavors to induce the local advertising agencies not to accept advertisements from the promoters of such plans and schemes. Through newspaper advertisements, radio talks, bulletins, and posters, it acquaints the public with fraudulent practices. It exposes specific fraudulent practices being carried on in Oklahoma City. It also endeavors to induce merchants to refrain from misleading advertising, extravagant claims, and price comparisons, and to conform to a high standard of business ethics. It endeavors to educate the consumer to buy wisely.

"Its services are rendered to nonmembers as well as members and are made available generally to the people in and about Oklahoma City. It also furnishes information to like Bureaus in other states." \* \* \*

On the above mentioned facts the Court held as follows:

"\* \* \* While the general rule is that tax-exempt statutes are to be construed strictly in favor of the government, the rule does not apply to exemption statutes of the character here involved. Such a statute should be liberally construed so as to further rather than hinder its beneficent purpose. The purpose of this exemption is to encourage religious, charitable, scientific, literary, and educational associations not operating for the profit of any private shareholder or individual.

Education is defined in Webster's New International Dictionary, Second Edition, as follows: 'The totality



of the information and qualities acquired through instruction and training, which further the development of an individual physically, mentally, and morally.' It was defined by the Supreme Court of Nebraska in *Ancient, etc. S. R. of Freemasonry v. Board of County Commissioners*, 122 Neb. 586, 241 N. W. 93, 96, 81 A. L. R. 1166, as follows: 'Furthermore, lexicographers and the courts agree in defining 'educational' as pertaining to 'education.' The latter word taken in its full sense is a broad, comprehensive term and may be particularly directed to either mental, moral or physical faculties, but in its broadest and best sense it embraces them all, and includes not merely the instructions received at school, college or university, but the whole course of training—moral, intellectual, and physical.

“ . . . It is a well-known fact that educators are now advocating high school training on the subject of intelligent buying.

*Here, the purpose of the Bureau is to educate the public concerning fraudulent schemes and practices and to enable the members of the public to avoid such practices and to become better and more intelligent buyers, and to inculcate higher ethical standards in business practices and advertising. Business intercourse is an important activity of everyday life. The inculcating of higher standards and of business ethics on the part of the merchant, inducing the operators of advertising mediums to insist on honest advertising, acquainting the public with fraudulent schemes and practices, and informing the individual how he may avoid such practices and buy more wisely, while within a limited field, are, in our opinion, educational in character.*

We, therefore, conclude that the Bureau is within the exemption, and that the judgment below should be affirmed.” (Italics ours.)

The exemption contained in the District of Columbia Unemployment Compensation Act, the pertinent Section being 1, par. b, sub-chap. 7 of the Act of August 28, 1935, 49 Stat. 954, reads as follows:

" \* \* \* (b) The term 'employment' means any service, of whatever nature, including employment in interstate commerce, performed after December 31, 1935, within the United States, by any individual under any contract of hire, oral or written, express or implied, so long as the greater part, as determined by the Board under regulations prescribed by it, of the service performed under such contract is performed within the District, except \* \* \*

" \* \* \* (7) service performed in the employ of a corporation, community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual; \* \* \*"

We cite this exemption in the District of Columbia Unemployment Compensation Act as it is almost identical in its terms with that given such corporations or organizations in the Federal Social Security Act hereinbefore set out and by reason of its analogy and similarity to the provisions of the exemption contained in the Federal Social Security Act.

We again refer to the decision of the lower court in the case of the *International Reform Federation v. District Unemployment Compensation Board*, 76 App. D. C. 282, 131 F. (2d) 337, as we think it is persuasive in upholding our contention in the instant case.

The lower court in considering the exemption of a corporation under the aforesaid Section of the District Unemployment Compensation Act, as late as September 22, 1942 held:

"The differing condition, character and wants of communities and nations change and enlarge the scope of 'charity', and where new necessities are created, new charitable uses must be established.

"In excepting from the District of Columbia Unemployment Compensation Act service performed in the

employ of a corporation, community chest, fund or foundation organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, etc.. Congress included every nonprofit organization designed and operating for the benefit and enlightenment of the community, the state or the nation, or those organizations commonly designed 'charitable' in the law of trusts. D. C. Code Supp. V, T. 8, § 311 (b) (7).

"The International Reform Federation, whose principal purpose and activities were promotion of sociological reform, suppression of gambling and political corruption, substitution of arbitration and conciliation for both industrial and international war, suppression of the white slave traffic, harmful drugs and kindred evils, was exempt as a 'charitable or educational corporation' from District of Columbia Unemployment Compensation Act, and was not affected by incidental political activities. D. C. Code-Supp. V. T. 8 § 311 (b) (7).

"In the enactment of the unemployment law in the District of Columbia it was within discretion of Congress to include charitable or educational institutions on the same terms as business or social organizations or if it included the former, to limit in such way as Congress thought proper the enjoyment of the preferred position, and the language of the act evinces a clear purpose to exclude charitable or educational institutions without limiting the enjoyment of their preferred positions and all that is requisite under the Act is that the institution claiming exemption shall be organized and operated exclusively for one of the named purposes. D. C. Code Supp. V, T. 8, § 311(b)(7).

"Where the District of Columbia Unemployment Compensation Act exempted service performed in the employ of a corporation, community chest, fund or foundation organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, without including the limitation that no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, which appeared in other laws, intent of Congress was to make the exception apply where the primary

and exclusive purpose was religious, charitable or educational. D. C. Code Supp. V, T. 8, § 311 (b) (7). Application for writ of certiorari denied December 21, 1942 by the Supreme Court of the United States, 87 L. Ed. Adv. Opinions No. 5, p. 224."

The above decision is expressive of the trend of the courts to meet the modern and present day conditions which clearly brings the petitioner within the exemption sought from the Federal social security taxation.

Furthermore, on March 8, 1943, the lower Court approved the foregoing decision in the case of the *National Rifle Association of America v. District of Columbia Unemployment Compensation Board*, 77 App. D. C. 290, 134 F. (2d) 524, and the Appellate Court in this case dealt principally in its decision with the fact that the appellant elected to incorporate under the Laws of the State of New York under the section providing for the organization of "societies or clubs for certain social and recreation purposes" instead of the New York Statute which provided for the incorporation of "benevolent, charitable, scientific and missionary societies," while in the case at bar the petitioner did in fact incorporate under the section of the D. C. Code which provides only for the incorporation of "charitable, scientific, educational, and religious associations."

We contend that this late decision strengthens our claim that the lower court erred in arriving at its conclusion in the case at bar.

It may be contended by the Government that the powers and objects of the petitioner were set out differently in its charter, but even if some of the verbiage is different, we think our case comes clearly within the principles laid down in the *Jones and International Reform Federation cases, supra*, thereby entitling the petitioner to the exemption under the provisions of the Federal Social Security Act, as the facts in our case show the operation and activities of the petitioner are clearly within the realm of education of the pub-

lie. To say that this petitioner does not come within the provisions of such exemption and the principles of law laid down in the *Jones and International Reform Federation* cases, on account of the difference in the wording of the powers, we believe should not receive serious consideration of this Court. The scheme of all Better Business Bureaus throughout the entire United States, (not alone in this case), inherently results in the education of the public and necessarily so. It is a well known public fact that the primary object of all of these Better Business Bureaus is that they are organized to educate the public, irrespective of any difference in the verbiage creating their powers in their respective charters.

The above argument is supported in the decision of the lower Court in the case of *Hazen, et al., Commissioners of the District of Columbia v. The National Rifle Association of America, Inc.*, decided December 5, 1938, 69 D. C. App. 339, 101 F. (2d) 432. This Appellate Court held:

“ \* \* \* To ascertain whether the property of a corporation is used for educational purposes within a tax exempt Statute, the Corporation must be judged not only by its declared objects, but also by what activities are actually carried on.

“The primary use made of property determines whether it is exempt from taxation as used for educational purposes \* \* \*”

Other cases can be cited upholding this doctrine, among them being numerous decisions along the lines of the *Chemist Club v. United States*, decided June 26, 1927, 64 Court of Claims 160, viz:

“ \* \* \* If the criterion is the dominant feature of the organization it is not difficult to determine that the ‘Chemist Club’ is not a social club because its dominant purpose is that of a scientific or educational organization \* \* \*”

In the above case the plaintiff sued and recovered a judgment for the refund of taxes. The Government attempted



to have the plaintiff classified as a social club on account of some of its activities but the Court exempted it from taxation as a scientific institution nevertheless.

The actual activities of a corporation showing whether or not it is organized for educational purposes or any other exempt purpose are important, when the same are within the powers as in the case at bar, so far as the judicial determination of the exemption is concerned, and in the *Hazen case, supra*, exemption was denied primarily on the ground that the corporation engaged in political and other non-educational activities.

This and other Better Business Bureaus throughout the United States are in their very nature also civic but that fact has not prevented the courts from exempting them from this or any other tax where their activities bring them within the exemption law. The fact of the matter is that in the *Jones and International Reform Federation cases*, the Government tried to show that these organizations were civic institutions and not educational ones and therefore not entitled to the exemption. This argument or theory of the Government was rejected totally by the United States Circuit Courts of Appeals in these cases.

The case at bar is identical with that of the decision of the United States Court of Appeals for the 10th Circuit in *Jones, Collector v. Better Business Bureau of Oklahoma City, supra*.

Petitioner relies upon the construction of the exemption clause of the Federal Social Security Act herein involved in the decision of the Court of Appeals for the 10th District in the *Jones Case, supra* (no application for writ for certiorari applied for), as it is believed to be a fair and correct judicial construction of such exemption clause, and therefore asks this Honorable Court to favor and adopt such construction of this law in the instant case, which would accordingly bring the petitioner within the benefit of the same as was, we believe, the intention of Congress.

**ACTIVITIES OF PETITIONER ARE IDENTICAL WITH  
THOSE OF THE APPELLANT, THE BETTER BUSI-  
NESS BUREAU OF OKLAHOMA CITY, INC., AND  
OTHER BETTER BUSINESS BUREAUS THROUGH-  
OUT THE UNITED STATES.**

In the lower court we again call attention to the fact that it was urged by counsel for the government that the difference in the verbiage of the charter of the Better Business Bureau of Oklahoma City, Inc., *Jones Case, supra*, created a material difference in determining the exemption benefit of this petitioner, and it is very evident from the decision of the lower court that it did not give serious consideration to the government's claim (which same argument was used by it in answering the brief of the petitioner for application for petition for writ of certiorari), but nevertheless we desire to anticipate any such argument, if the Government uses the same in the case at bar, and therefore call this Honorable Court's attention to the following:

Supporting our contention, we believe we should call the Court's attention to the fact that the Better Business Bureaus operating in the United States, all operate in the same manner, although the wording of the powers contained in the various articles of incorporation of such organization may vary, but all such powers attempt to attain the same objective.

This is common knowledge and supporting the same we quote the powers conferred by the charter of the Better Business Bureau of Oklahoma City, aforesaid, which read as follows:

"To inform and to educate the public by various forms of publicity or otherwise, as to the difference between honest and legitimate advertising and that which is misleading, dishonest, and improper in order to create public confidence in honest and legitimate advertising and honest and legitimate business, and to prevent the public from being misled by persons using unfair advertisements or unfair business methods.

"By all proper means to educate and inform merchants, manufacturers, and other business men as to honest, fair and legitimate advertising and business methods and the discouragement of unfair competition and unfair dealings with the public . . ."

See: Transcript of Record, p. 4, *Jones case*, supra.)

By comparison this Honorable Court will readily see the intent and purpose in the above powers and those contained in the articles of incorporation of the petitioner, the Better Business Bureau of Washington, D. C., Inc., which we restate as follows:

" . . . the object for which it is formed is for the mutual welfare, protection and improvement of business methods among merchants and other persons engaged in any and all business or professions and occupations of every description whatsoever that deal directly or indirectly with the public at large, and for the educational and scientific advancement of business methods among persons, corporations or associations engaged in business in the District of Columbia so that the public can obtain a proper, clean, honest and fair treatment in its dealings or transactions with such merchants, tradesmen, corporations, associations or persons following a profession and at the same time protecting the interest of the latter classes of businesses to enable such as are engaged in the same to successfully and profitably conduct their business and for the further purpose of endeavoring to obtain the proper, just, fair and effective enforcement of the Act of Congress approved May 29th, 1916, otherwise known as "An Act to prevent fraudulent advertising in the District of Columbia."

The verbiage in the foregoing paragraphs, while somewhat different, nevertheless both of them, as heretofore stated, seek to attain the same object, that is to educate business men, bankers and professional men and the public by teaching of fair competition, honesty, integrity, and truthfulness to gain a very high objective and standard in the conduct of various businesses and professions thereby

giving the public the advantage thereof in their daily dealings as well as teaching the public how to protect its interest as a consumer or patron. This is a point that the District Court decided in *Jones, Collector case, supra*. Among other things, District Judge Vaught said:

“ \* \* \* One of its main objectives is to warn the unsuspecting purchaser, by pamphlets, bulletins, and radio, against the fascinating and intriguing neighborhood canvasser and impostor, who represents that he is selling articles of extremely high quality at exceedingly low cost when in fact the articles offered for sale are of inferior quality and the sales price high. It particularly warns the public against the misleading and deceptive representations of irresponsible promoters dealing in capital stocks, units in so-called common-law trusts, and other questionable securities of little or no value, to the end that people of small means and income may be protected against worthless investments.” \* \* \*

This doctrine of course was approved by the Appellate Court in affirming the decision in the *Jones case, supra*.

### **COMMENT ON THE DECISION OF THE LOWER COURT.**

The lower court erred in holding that the petitioner was a civic institution only and not an educational institution as a basis for reaching its adverse conclusion. This same theory was advanced (as heretofore stated) by the Government before the appellate court for the 10th Circuit in the *Jones case, supra*, and that Court did not give any weight to this argument for the reason it decided, among other things that the Better Business Bureau could be not only a civic institution but also one organized and operated exclusively for educational or scientific purposes. Further, it is a public fact that many civic institutions do not have the character and scope of operations such as possessed by the petitioner. The latter has no function as a civic institution (if you would call it such) except to educate the mer-

chant or business man and the public, in order to attain its object, which is done by lectures, radio, conferences, meetings, through the press, and the printing and distribution of a very large amount of literature. While it may be regarded in a sense as a civic institution, nevertheless the facts prove that it is also clearly an organization organized and operated exclusively for educational purposes as hereinbefore stated.

The narrow and limited construction of the lower court in arriving at its decision is also in conflict and contrary to the principle adopted by the District Court in the *Jones case*, 34 Fed. Supp. 573, decided July, 1940, viz:

" \* \* \* Educational training is not confined to colleges, universities or even the public schools but consists, in the broadest sense, of acquiring information or inspirational suggestions which cause the individual to think and act along proper lines. Certainly, the teaching of honesty, integrity, and truthfulness is the very highest objective of an education." \* \* \* Approved by U. S. Circuit Court of Appeals, 123 F. (2d) 767.

See Argument (B. 18).

It must be conceded that there are many institutions of a civic character that have no educational or scientific activities, nevertheless it is true that a charitable, educational or scientific institution may also be civic in some respects and the fact that it may be civic in character does not destroy its charitable, scientific or educational activities for which it was exclusively organized and operated. As heretofore stated, if the decision of the lower court was correct this petitioner could not have been organized under Section 599 of the Code of Law of the District of Columbia, but would have had to be created under an entirely different section or sections which provide for the incorporation of civic institutions in the District of Columbia.

The decision of the lower court in the instant case is also in conflict with the rule laid down by the appellate court in the case of *International Reform Federation v. District Un-*



*employment Compensation Board*, 76 U. S. App. D. C. 272, 131 F. (2d) 337, on the construction of the exemption clause contained in the District of Columbia Unemployment Act (B. 4-5) which is identical with the exemption contained in the Federal Social Security Act (B. 2-3), as it adopted a more liberal construction with respect to the definition of charitable, educational, and scientific institutions. In this case the court held *inter alia*

“ \* \* \* Charity in its legal sense comprises trusts for the relief of poverty, trusts for the advancement of education, trusts for the advancement of religion and trusts for other purposes beneficial to the community not falling under any of the previous heads. \* \* \* ”

The lower court in differentiating between the case at bar, and the *International Reform Federation* Case, *supra*, lost sight of the fact that there are numerous forms of educational institutions due to the march of time. The activities of appellant in the *International Reform Federation* Case, *supra*, were different in character from that of the petitioner, nevertheless, its reasoning in arriving at its decision in the above case should have been applied to an institution such as that of the petitioner. In fact today there are many kinds of educational institutions operating which are not necessarily charitable in their very nature, but serve the public for the educational and scientific advancement. This latter class have received the benefit of a favorable construction of exemption acts such as in the above case and such rule of custodian has been followed by numerous courts throughout this country, among which we cite the following in addition to the Jones Case, *supra*:

*W. Trinidad, Insular Collector, v. Sagrada Orden De Predicadores, etc.*, 263 U. S. 578, 68 L. Ed. 458.

*Hassett, Collector, v. Associated Hospital Service Corporation of Massachusetts*, 125 F. 616.

*Slocum et al. v. Bowers*, 15 F. (2d) 400-403.

*St. Louis Union Trust Company et al. v. Burnett*, 59 F. (2d) 922-9.

*Missouri Historical Society v. Academy of Science*,  
94 Mo. 459, 8 S. W. 346.

*Southeastern Fair Association v. U. S.*, 52 Fed. Sup.  
219.

*Oklahoma State Fair and Exposition v. Jones, Col-  
lector of Internal Revenue*, 44 Fed. Supp. 630-2.

**THE QUESTION INVOLVED APPEARS TO BE A  
NOVEL ONE FOR CORPORATIONS OF THIS CLASS.**

The petitioner operating as a Better Business Bureau, as well as other Better Business Bureaus throughout the United States, are organizations operating for the education of business men of every character and the public and are, we might say, organizations created under the corporation laws throughout the United States of recent times as the result of the evolution of business.

These institutions have all been created within the past thirty (30) years, and therefore their rights under the law, so far as the imposition of duties or taxes, should be construed in the legal manner such as has been prescribed by the appellate courts in the case of *Better Business Bureau v. Jones, Collector*, and *International Reform Federation v. District Unemployment Compensation Board*, *supra*.

Congress has met this modern method by broadening the exemptions in the Federal Social Security, Unemployment and other taxing laws as will be readily perceived by the exemptions contained in the above mentioned laws, herein before set out (B. 2-5).

Further we contend that the exemption clause of the Federal Social Security Act in question (which is legislation of modern times and not an old act) here does not contain any ambiguity. This Court has decided many time that an adverse construction of a Federal Act by any governmental agency shall not prevail where the Statute in question speaks clearly, such as in the case at bar (numerous decisions having been cited in this brief covering that point), therefore we think that the appellate court erred in its decision denying this petitioner the relief it seeks, in holding

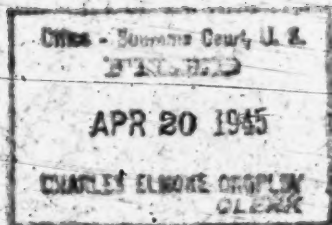
that such adverse departmental construction shall prevail. This high court has on many occasions, where such a point was involved, set aside such adverse construction as being unreasonable, incorrect, and unfair to the taxpayer. The decisions of this court in favor of the litigant seeking relief from such adverse departmental construction are clear and numerous and it would be only taking up unnecessary time of this court to cite them as additional authorities. Especially is the decision of the lower court in this case on question giving the relief sought by the petitioner, which we think is justified by the facts in this case.

### **CONCLUSION.**

For the foregoing reasons, it is respectfully submitted that judgment of the United States Court of Appeals for the District of Columbia should be reversed.

SIMON LYON,  
R. B. H. LYON,  
*Counsel for Petitioner.*

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No. 1089

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**In the Supreme Court of the United States.**

**OCTOBER TERM, 1944.**

**BETTER BUSINESS BUREAU OF WASHINGTON, D. C.,  
INC., PETITIONER**

**v.**

**UNITED STATES OF AMERICA**

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE DISTRICT OF  
COLUMBIA**

**BRIEF FOR THE UNITED STATES IN OPPOSITION**

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## **OPINIONS BELOW**

The opinions of the District Court (R. 47) and of the Court of Appeals (R. 52-55) are not yet reported.

## **JURISDICTION**

The judgment of the Court of Appeals was entered on February 19, 1945 (R. 56), and the petition for a writ of certiorari was filed on March 29, 1945. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

**QUESTION PRESENTED**

Whether the petitioner was exempt from social security taxes as a corporation organized and operated exclusively for educational or scientific purposes within the meaning of Section 811 (b) of the Social Security Act and Section 1426 (b) (8) of the Internal Revenue Code.

**STATUTES AND REGULATIONS INVOLVED**

The pertinent statutory and regulatory provisions are set forth in the Appendix, *infra*, pp. 7-10.

**STATEMENT**

The opinion of the District Court contains no findings of fact. The facts were stipulated (R. 12), and may be summarized as follows:

The petitioner was organized under the laws of the District of Columbia (R. 12). Its charter states (R. 12-13):

\* \* \* the object for which it is formed is for the mutual welfare, protection and improvement of business methods among merchants and other persons engaged in any and all business or professions and occupations of every description whatsoever that deal directly or indirectly with the public at large, and for the educational and scientific advancements of business methods among persons, corporations or associations engaged in business in the District of Columbia so that the public can obtain a proper, clean, honest and fair treatment in

its dealings or transactions with such merchants, tradesmen, corporations, associations or persons following a profession and at the same time protecting the interest of the latter classes of businesses to enable such as are engaged in the same to successfully and profitably conduct their business and for the further purposes of endeavoring to obtain the proper, just, fair and effective enforcement of the Act of Congress approved May 29th, 1916, otherwise known as "An Act to prevent fraudulent advertising in the District of Columbia."

The petitioner was not organized for profit, had no shares of stock, and no part of its earnings inured to the benefit of any private shareholder or individual (R. 13). Its work was financed by voluntary subscriptions or membership fees received in varying amounts from interested business people (R. 13-14). The petitioner's officers were elected annually from its membership, had only nominal duties, and were paid no salary. Only the managing director and a number of employees were paid. (R. 14.)

Upon inquiry, the petitioner furnished available information to members and non-members alike (R. 13). To combat fraud, it gave warnings of swindlers and their schemes, and sought to frustrate them (R. 14-15). The petitioner sought to raise business standards by convincing merchants that "the doctrine of caveat emptor is not good

business," and by fostering a "constructive, voluntary, plan of honest advertising . . . in the interest of public confidence" (R. 15). By means of speeches, bulletins, and newspaper and radio matter, the petitioner sought to protect the consumer's "interest in our economic scheme" (R. 15-16). It cooperated with various local and federal law-enforcement agencies (R. 16). Finally, it engaged in a variety of other activities, such as informing merchants of new legislation applicable to business and assisting in putting it into effect (R. 27).

After paying the taxes involved for the calendar years 1937 to 1941, inclusive, the petitioner filed claims for refunds, which were disallowed (R. 40, 42). It then instituted action for recovery of the taxes in the District Court (R. 2), which granted a motion for summary judgment for the United States (R. 47). The judgment of the District Court was affirmed on appeal to the Court of Appeals for the District of Columbia (R. 56).

#### ARGUMENT

1. It is at least doubtful whether the decision below conflicts with the decision of the United States Circuit Court of Appeals for the Tenth Circuit in *Jones v. Better Business Bureau of Oklahoma City*, 123 F. 2d 767. That case involved a different corporation organized for pur-

poses related less directly to the business advantage of its members than the purposes of the petitioner (123 F. 2d at p. 768; R. 12-13).

We believe that the purposes for which the respective corporations were organized were sufficiently different to prevent a direct conflict in decisions, since under the statutes (Section 811 (b) of the Social Security Act and Section 1426 (b) (8) of the Internal Revenue Code, Appendix, *infra*, pp. 7-9) exemption may be had only if the claimant was organized, as well as operated, exclusively for one or more of the stated purposes. Moreover, it cannot be assumed that the different corporations were operated for the same purposes. The evidence in each case was of course not the same, and the District Courts drew different conclusions from the different evidence. That the appellate courts announced conflicting or at least divergent views of the law in affirming the decisions of the District Courts on this exemption provision does not, in our opinion, present a situation calling for intervention by this Court.

2. This case arose on its own special facts, and was decided in accordance with correct principles of law. It does not present any question of general importance.

#### CONCLUSION

The decision below is correct and presents no question of general importance. There is no



clear conflict in decisions. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

CHARLES FAHY,  
*Solicitor General.*

SAMUEL O. CLARK, Jr.,  
*Assistant Attorney General.*

SEWALL KEY,  
J. LOUIS MONARCH,

*Special Assistants to the Attorney General.*

APRIL 1945.

## APPENDIX

Social Security Act, c. 531, 49 Stat. 620:

SEC. 811. When used in this title—

(b) The term "employment" means any service, of whatever nature, performed within the United States by an employee for his employer, except—

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual. (42 U. S. C. ed., Sec. 1011.)

Internal Revenue Code:

SEC. 1426. DEFINITIONS.

When used in this subchapter—

(b) *Employment.*—The term "employment" means any service of whatever nature, performed within the United States by an employee for his employer, except—

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or ani-

mals, no part of the net earnings of which inures to the benefit of any private shareholder or individual; \* \* \*. (26 U. S. C., Sec. 1426.)

Social Security Act Amendments of 1939, c. 666, 53 Stat. 1360:

SEC. 606. Effective January 1, 1940, section 1426 of the Internal Revenue Code is amended to read as follows:

SEC. 1426. DEFINITIONS.

When used in this subchapter—

\* \* \*

(b) *Employment*.—The term “employment” means any service performed prior to January 1, 1940, which was employment as defined in this section prior to such date, and any service, of whatever nature, performed after December 31, 1939, by an employee for the person employing him, irrespective of the citizenship or residence of either, (A) within the United States, or (B) on or in connection with an American vessel under a contract of service which is entered into within the United States or during the performance of which the vessel touches at a port in the United States, if the employee is employed on and in connection with such vessel when outside the United States, except—

\* \* \*

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial

part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation; \* \* \* (26 U. S. C., Sec. 1426.)

Treasury Regulations 91, promulgated under Title VIII of the Social Security Act:

ART. 12. *Religious, charitable, scientific, literary, and educational organizations and community chests.*—Services performed by any employee of an organization of the class specified in section 811 (b) (8) are excepted.

For the purpose of the exception the nature of the service is immaterial; the statutory test is the character of the organization for which the service is performed.

In all cases, in order to establish its status under the statutory classification, the organization must meet two tests:

(1) It must be organized and operated exclusively for one or more of the specified purposes; and

(2) Its net income must not inure in whole or in part to the benefit of private shareholders or individuals.

An educational organization within the meaning of section 811 (b) (8) of the Act is one designed primarily for the improvement or development of the capabilities of the individual, but, under exceptional circumstances, may include an association whose sole purpose is the instruction of the public, or an association whose primary purpose is to give lectures on subjects useful to the individual and beneficial to the community, even though an association of either class has incidental amusement features. An organization formed, or availed

of, to disseminate controversial or partisan propaganda or which by any substantial part of its activities attempts to influence legislation is not an educational organization within the meaning of section 811 (b) (8) of the Act.

The provisions of Section 402.215, Treasury Regulations 106, promulgated under the Federal Insurance Contributions Act (Sections 1400-1431 of the Internal Revenue Code) are substantially the same as those of Article 12, Treasury Regulations 91.



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# **In the Supreme Court of the United States**

**OCTOBER TERM, 1945**

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**No. 52**

**BETTER BUSINESS BUREAU OF WASHINGTON, D. C.,  
INC., PETITIONER**

**v.**

**UNITED STATES OF AMERICA**

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**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT  
OF APPEALS FOR THE DISTRICT OF COLUMBIA**

---

**BRIEF FOR THE UNITED STATES**

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## **OPINIONS BELOW**

The opinion of the District Court (R. 39) is not reported. The opinion of the Court of Appeals (R. 42-46) is reported at 148 F. 2d 14.

## **JURISDICTION**

The judgment of the Court of Appeals was entered on February 19, 1945. (R. 47.) The petition for a writ of certiorari was filed on March 29, 1945, and granted on April 30, 1945. (R. 48.) The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

**QUESTION PRESENTED**

Whether the petitioner was exempt from social security taxes as a corporation organized and operated exclusively for scientific or educational purposes within the meaning of Section 811 (b), (8) of the Social Security Act and Section 1426 (b) (8) of the Internal Revenue Code.

**STATUTES AND REGULATIONS INVOLVED**

The pertinent statutory provisions and regulations are set forth in the Appendix, *infra*, pp. 24-27.

**STATEMENT**

The opinion of the District Court contains no findings of fact. The stipulated facts and principal exhibits (R. 9-25) may be summarized as follows:

The petitioner was organized under the laws of the District of Columbia. (R. 9.) Its charter states (R. 9-10):

\* \* \* the object for which it is formed is for the mutual welfare, protection and improvement of business methods among merchants and other persons engaged in any and all business or professions and occupations of every description whatsoever that deal directly or indirectly with the public at large, and for the educational and scientific advancements of business methods among persons, corporations or associations engaged in business in the



District of Columbia so that the public can obtain a proper, clean, honest and fair treatment in its dealings or transactions with such merchants, tradesmen, corporations, associations or persons following a profession and at the same time protecting the interest of the latter classes of businesses to enable such as are engaged in the same to successfully and profitably conduct their business and for the further purposes of endeavoring to obtain the proper, just, fair and effective enforcement of the Act of Congress approved May 29th, 1916, otherwise known as "An Act to prevent fraudulent advertising in the District of Columbia."

The petitioner is not organized for profit and has no shares of stock, and no part of its earnings inure to the benefit of any private shareholder or individual. (R. 10.) Its officers are elected annually from its membership, have only nominal duties, and are paid no salary. Only the managing director and a number of employees are paid. (R. 11.) Membership is open to "any person, firm, corporation or association interested in better business ethics" as may be elected by the board of trustees and pay "voluntary subscriptions", or dues. (R. 15.)

The by-laws of the petitioner provide for a board of trustees numbering from 15 to 40 and elected by the members, which meets monthly to create and define the policy of the petitioner.

(R. 16.) An officer of the Advertising Club of Washington is a member of the board of trustees, so that the Club may "always be represented on this Board by one of its officers." (R. 17.) General management of the petitioner is vested in a paid secretary or managing director who is charged with the duty to "conduct all investigations and take such action as in his judgment he deems best, fit and proper, for the general conduct of this corporation or organization as to the final disposition to be made of cases investigated by him." (R. 11, 19.) Petitioner operates "through an experienced staff, including a director, assistant director, division managers, trained shoppers and office personnel." (R. 21.)

Information which the petitioner compiles is available to anyone without charge. (R. 10.) Petitioner gives warning of fraudulent schemes and seeks to frustrate them. (R. 11.) Newspapers and radio networks frequently refuse advertising facilities to enterprises exposed by petitioner. (R. 11.) Petitioner also endeavors to raise business standards by convincing merchants, especially through meetings, that "the doctrine of caveat emptor is not good business" (R. 11) and by advocating a constructive, voluntary plan of honest advertising in the interest of public confidence. Its efforts are frequently successful. (R. 11-12.) In the interest of consumers and in the belief that the public and the

business man should work together for a better understanding of each other's problems the petitioner communicates information and guidance to the public by talks to groups of individuals, bulletins, and radio addresses. (R. 12.) It encourages the consuming public to make inquiries from reliable sources before spending its money upon unknown or doubtful propositions.

Petitioner has a Merchandise Division which, aside from participating in the activities already mentioned, checks local advertising and seeks to obtain the cooperation of advertisers when inaccuracies are discovered, accepts and adjusts consumer complaints in order to bring "about a better understanding between business and consumer", and keeps merchants informed of new legislation and assists in putting it into effect. (R. 22.) Other services, available to members, include a bulletin issued at regular intervals and, upon special request, the preparation of reports on individuals or firms operating in or outside of Washington. (R. 22.) Petitioner exchanges information with 85 other Better Business Bureaus. (R. 13.)

Petitioner invokes the intervention of various law-enforcement agencies where other methods fail to bring results in the prevention of illegal practices (R. 21), and it assists in the prosecution of offenders "when necessary" (R. 22).

After paying the taxes involved for the calendar

years 1937 to 1941, inclusive, the petitioner filed claims for refunds, which were disallowed. (R. 26, 29, 33, 34.) It then sued in the District Court to recover its money. That court granted a motion for summary judgment for the United States. (R. 38.) The judgment of the District Court was affirmed by the United States Court of Appeals for the District of Columbia. (R. 47.)

#### SUMMARY OF ARGUMENT

The underlying purposes of petitioner and the nature of its activities must both be conducive to the same exempting end if petitioner's contention is to be sustained. It is not enough that petitioner may have the character of a business league, chamber of commerce, or civic organization; the claimed exemption from social security taxes requires that petitioner be devoted exclusively to an educational purpose. It is clear, we think, that petitioner has "an underlying commercial motive", as the court below found.

Both the declaration of purpose in petitioner's charter of incorporation and the nature of its organization and constituency reflect its underlying aim. That aim is not the "improvement or development of the capabilities of the individual", which the Treasury regulations correctly state to be the object of education, but, rather, to promote the successful functioning of the business system on a profitable basis. It is clear that this is not an exempting purpose.

Far from negating the stated purpose and apparent character of petitioner as an organization, its activities themselves clearly serve the same end. The fact that some of them are educational in a limited sense does not outweigh the object toward which they are directed and could not in any event render instruction the "exclusive" function of petitioner in the face of other, entirely non-educational activities. It is a fair inference from the record that petitioner's policing activities, directed against unethical business practices and fraudulent merchandising schemes, occupy the most important place in its work. The by-laws specify the duty of the managing director in relation to these activities alone, and petitioner's appeal to prospective contributors stresses the same activities. The fact that this work is carried out on a high plane and is beneficial to the public at the same time that it aids legitimate business, does not make it educational. Petitioner's promotion of better business methods and more discriminating consumer practices, which constitutes educational activity in a limited sense, is education for the sake of business, rather than part of an essentially educational program.

The legislative history of Section 811 (b) (8) of the Social Security Act, upon which this case turns, shows that the exempting provision was intended to have sharply restricted application. Business leagues, chambers of commerce, and the



like, which are exempted from income taxation, were purposefully omitted from the Social Security Act exemption, except as to employees receiving less than \$45 wages in a calendar quarter. The decision in *Jones v. Better Business Bureau of Oklahoma City*, 123 F. 2d 767 (C. C. A. 10), goes counter to the purpose of Congress and, as we believe, erroneously applies a liberal construction to an exempting provision from remedial legislation. Such a provision should, under the authorities, be strictly construed.

#### ARGUMENT

PETITIONER WAS NOT ORGANIZED AND OPERATED EXCLUSIVELY FOR SCIENTIFIC OR EDUCATIONAL PURPOSES WITHIN THE MEANING OF SECTION 811 (B) (8) OF THE SOCIAL SECURITY ACT AND SECTION 1426 (B) (8) OF THE INTERNAL REVENUE CODE

The Better Business Bureau contends that it is "organized and operated exclusively for . . . scientific . . . or educational purposes" within the meaning of Section 811 (b) (8) of the Social Security Act (*infra*, p. 24) and Section 1426 (b) (8) of the Internal Revenue Code (*infra*, pp. 24-26)<sup>1</sup> and hence is exempt from lia-

<sup>1</sup> Services performed by organizations defined in identical terms are excluded from the definition of employment qualifying for benefits under the social security legislation. Section 209 (b) (8) of the Social Security Act, as amended by Section 201 of the Social Security Act Amendments of 1939, c. 666, 53 Stat. 1360, 42 U. S. C. 409. Identical terms are also employed to confer exemption from the Federal income tax.

bility for employment taxes imposed by Sections 801, 802, and 804 of the Social Security Act and Sections 1400, 1401, and 1410 of the Internal Revenue Code. We maintain that the rejection of that contention by the courts below was correct.

The statute limits exemption to organizations which are both organized and operated exclusively for one or more of the designated purposes. Petitioner's stated purposes and the nature of its activities must both be conducive to the same exempting end if its contention is to be sustained. It is clear, we think, that both display "an underlying commercial motive", as the court below found (R. 44).

It is not enough that petitioner may have the character of a business league, chamber of commerce, or civic organization. It has in fact (R. 13) been recognized as exempt from income taxes as a business league pursuant to paragraph (7) of Section 101 of the Internal Revenue Code (see *supra*, fn. 1); and it might be exempted from social security taxes under Section 1426 (b) (10) (A). (26 U. S. C. 1426 (b) (10) (A)) with respect

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Paragraph (6) of Section 101 of the Internal Revenue Code, 26 U. S. C. 101 (6). Related exemptions from income taxes are those of business leagues, chambers of commerce, real estate boards, and boards of trade (*idem*, par. (7)) and of civic leagues and organizations operated exclusively for the promotion of social welfare (*idem*, par. (8)).

Contributions, gifts, and bequests to organizations defined in terms identical to those here involved are allowed as deductions from the income, gift, and estate taxes. Sections 23

to any employees who earned less than \$45 in a calendar quarter; but this does not establish the exemption which it here asserts. To establish that requires educational or scientific<sup>2</sup> purposes and activities as distinguished from business or even civic ends and operations. We turn, then, to consider the purposes and activities of the Bureau.

*A. Petitioner is Disqualified for Exemption by its Expressed Purposes and by the Character of its Organization.*

The declaration of purposes contained in petitioner's charter of incorporation (R. 9-10) is clear and explicit and correctly reflects the nature

(o) (2) of the Internal Revenue Code, as amended by Section 224 (a) of the Revenue Act of 1939, c. 247, 53 Stat. 862, 26 U. S. C. 23 (o) (2); Section 23 (q) of the Internal Revenue Code, as amended by Section 224 (b) of the Revenue Act of 1939; Section 125 of the Revenue Act of 1942, c. 619, 56 Stat. 822; Section 114 of the Revenue Act of 1943, c. 63, 58 Stat. 35, 26 U. S. C., Supp. IV, Sec. 23; and Sections 120, 162 (a), 213 (c), 331 (b), 812 (d), 861 (a) (3), 1004 (a) (2) (B) of the Internal Revenue Code, 26 U. S. C. 120, 162 (a), 213 (c), 331 (b), 812 (d), 861 (a) (3), and 1004 (a) (2) (B).

<sup>2</sup> It is in reality not contended, nor could it be, that petitioner pursues scientific ends. The question is whether petitioner is an educational organization within the meaning of the statute. We shall, accordingly, omit further reference to scientific objectives as an exempting feature. Petitioner also makes reference (Br. 15-18) to "charitable" purposes. Since this apparently is on the theory that they include educational ends and the point involved is still stated in terms of educational and scientific purposes (Pet. br. 10), we shall also not refer further to the exemption of charitable organizations.

of the activities which petitioner carries on. Petitioner was formed "[1] for the mutual welfare, protection and improvement of business methods among merchants \* \* \* and \* \* \* professions and occupations that deal directly \* \* \* with the public \* \* \*; [2] for the educational and scientific advancements of business methods," to the end that (a) the public can obtain a "proper, clean, honest and fair treatment in its dealings or transactions with such merchants, tradesmen, corporations, associations or persons" and (b) "such as are engaged in the same" may "successfully and profitably conduct their business;" and "[3] to obtain the proper, just, fair and effective enforcement" of a statute against fraudulent advertising in the District of Columbia. These are purposes which are not directed to the end of "improvement or development of the capabilities of the individual," which Article 12 of Treasury Regulations 91 (*infra*, pp. 26-27) correctly states to be the object of education, but, rather, promote the successful functioning of the business system on a profitable basis—albeit the normal business system as opposed to fraudulent, unethical dealing with the public.

Petitioner's organization and constituency reflect its underlying purpose. Its appeal for financial support is addressed to business (R. 20-23, esp. pars. 11 and 16); its trustees are business men who serve in their capacity as such (R. 23-25). Manifestly its design is to preserve "the

security and good will to which all legitimate business is entitled, and which if endangered is damaging to you [who are solicited for support] as well as the firm directly affected" (R. 23).

In view of the foregoing, it is clear that petitioner is not aided by an underlying exempting purpose such as might prevail over attendant activities of a commercial nature, as were the taxpayers in *Trinidad v. Sagrada Orden*, 263 U. S. 578, relied upon by petitioner, and in such cases as *Bohemian Gymnastic Association v. Higgins*, 147 F. 2d 774 (C. C. A. 2d) and *Debs Memorial Radio Fund v. Commissioner*, 148 F. 2d 948 (C. C. A. 2d). It would require a strong showing to overcome the basic character which petitioner assumed in embarking upon corporate existence. Cf. *Roche's Beach, Inc. v. Commissioner*, 96 F. 2d 776, 777-778 (C. C. A. 2d); <sup>3</sup> *Bear Gulch Water Co. v. Commissioner*, 116 F. 2d 975 (C. C. A. 9th). There is no such showing here.

**B. Petitioner's Activities Do Not Reflect an Educational Purpose.**

Far from negating the stated purpose and apparent character of petitioner as an organization, the activities which petitioner carries on clearly serve the same end. The fact that some of these activities are educational in a limited sense does

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<sup>3</sup> The Commissioner of Internal Revenue has not acquiesced in the actual decision in the *Roche's Beach* case. G. C. M. 23063, 1942-1 Cum. Bull. 103.



not outweigh the object toward which they are directed and could not in any event render their immediate purpose of instruction the "exclusive" function of the organization in the face of other, entirely non-educational activities.

Petitioner's activities fall into three principal categories: (1) combatting specific instances of unethical practices and fraudulent merchandising schemes through (a) investigations, (b) persuasion for their abandonment, (c) closing of advertising media to them, (d) publicity and advice to inquirers, and (e) invocation of law enforcement agencies; (2) showing and convincing merchants that "the doctrine of caveat emptor is not good business" (R. 11), leading them to refrain from harmful methods of advertising; and (3) warning the buying public against careless spending and advising it of reliable sources of information.

It is a fair inference from the record that the first of these three categories of petitioner's activities occupies the most important place in its work; and it is in no sense educational. The only specific duty of the managing director spelled out in the by-laws, aside from the keeping of minutes, is that he "shall conduct all investigations and take such action as in his judgment he deems best \* \* \* as to the final disposition to be made of cases investigated by him" (R. 19). Two out of four of petitioner's self-described purposes, or

types of activity; three out of six of its claimed services to the public; three out of five of the services of its Merchandise Division; all of the work of its Financial Division; the only additional service to members which is specifically mentioned; and the two "other services" of petitioner "to the public and business", relating to solicitation schemes and "classified advertising rackets", (R. 20-22) fall within this category. The fact that this work is carried out on a high plane, is designed to save the public much loss—loss which reduces the purchasing power available to legitimate business (R. 21)—and tends to maintain consumer confidence in legitimate business (R. 22-23) does not make it educational. It is a policing function, albeit under private auspices, and its purpose is avowedly self-protection and business advantage.

The same purpose animates the promotion of better business methods and more discriminating consumer practices which petitioner carries on and which, like highway safety training and the inculcation of vocational skills, has limited educational aspects. In the hands of petitioner, the goal of this educational work, which is business advantage rather than "improvement or development of the capabilities of the individual", determines its character for tax purposes. Occurring as it does in company with somewhat overshadowing efforts to thwart the schemes of swindlers, it

certainly cannot characterize petitioner as an organization "operated exclusively for educational \* \* \* purposes".

Clearly, therefore, just as a scientific organization may operate on a basis of "science for the sake of business" rather than of "science for the sake of science" (*Underwriters' Laboratories v. Commissioner*, 135 F. 2d 371, 373 (C. C. A. 7th)), certiorari denied, 320 U. S. 756, so petitioner may fairly be said to carry on education for the sake of business. Its educational work, even though it might result in exemption if carried on alone or as part of a larger educational program, cannot confer exemption where, as here, it accompanies policing activity and is conducted for business reasons. *Marshall v. Commissioner*, 147 F. 2d 75 (C. C. A. 2d), certiorari denied, June 4, 1945; *Round Table Club v. Fontenot*, 143 F. 2d 196 (C. C. A. 5th); *West Side Tennis Club v. Commissioner*, 111 F. 2d 6 (C. C. A. 2d), certiorari denied, 311 U. S. 674; *Hazen v. National Rifle Ass'n of America*, 101 F. 2d 432 (App. D. C.); *Vanderbilt v. Commissioner*, 93 F. 2d 360 (C. C. A. 1st); *Stanford University Book Store v. Helvering*, 83 F. 2d 710 (App. D. C.); *Jockey Club v. Helvering*, 76 F. 2d 597 (C. C. A. 2d); *Davison v. Commissioner*, 60 F. 2d 50 (C. C. A. 2d); *Leubuscher v. Commissioner*, 54 F. 2d 998 (C. C. A. 2d); *Slee v. Commissioner*, 42 F. 2d 184 (C. C. A. 2d); *Stoeckel v. Commissioner*, 2 T. C. 975; *Cook v. Commissioner*, 30

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*C. The Legislative History of the Statutes and the Treasury Regulations Show that Organizations such as Petitioner Are Not Exempt.*

The history of Section 811 (b) (8) of the Social Security Act shows that the exempting provision was intended to have sharply restricted application. It was taken substantially verbatim from Section 101 (6) of the Revenue Act of 1934, c. 277, 48 Stat. 680. Congress did not, however, enact in the Social Security Act other exemptions embodied in Section 101, such as subsection (7) relating to "business leagues, chambers of commerce, real-estate boards, or boards of trade" such as petitioner (see *supra*, p. 9), or subsection (8), relating to "civic leagues." The Treasury Regulations in force at the time under Section 101 (6) (Article 101 (6)-1 of Treasury Regulations 86) stated—

An educational organization within the meaning of the Act is one designed primarily for the improvement or development of the capabilities of the individual, but, under exceptional circumstances, may

include an association whose sole purpose is the instruction of the public, or an association whose primary purpose is to give lectures on subjects useful to the individual and beneficial to the community, even though an association of either class has incidental amusement features. \* \* \*

Article 101 (7)-1 of the same Regulations, promulgated under Section 101 (7), defined a "business league" as—

\* \* \* an association of persons having some common interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. \* \* \*

To illustrate the charitable and educational organizations granted exemption from the Social Security Act, the committee reports on the Social Security Act specifically named "churches, schools, colleges," the Y. M. C. A., the Y. W. C. A., the Y. M. H. A., and the Salvation Army. H. Rep. No. 615, 74th Cong., 1st Sess., p. 33 (1939-2 Cum. Bull. 600); S. Rep. No. 628, 74th Cong., 1st Sess., p. 54 (1939-2 Cum. Bull. 611).



It is clear, therefore, that Congress intended to differentiate sharply between organizations organized and operated exclusively for religious, charitable, scientific, literary or educational purposes on the one hand, and "business leagues," etc., on the other hand. See further, *Hassett v. Associated Hospital Service Corp.*, 125 F. 2d 611 (C. C. A. 1st), certiorari denied, 316 U. S. 672. See also, S. S. T. 7, XV-1 Cum. Bull. 475 (1936); S. S. T. 176, 1937-2 Cum. Bull. 445.

The narrow scope of Section 811 (b) (8) was confirmed by the enactment of the Social Security Act Amendments of 1939, c. 666, 53 Stat. 1360. Sections 606 and 614 thereof redefined "employment" to exclude services performed in the employ of any organization exempt under Section 101 if the remuneration for such services did not exceed \$45 in a calendar quarter. This redefinition was said by the committee reports to provide "new exemptions." H. Rep. No. 728, 76th Cong., 1st Sess., p. 47 (1939-2 Cum. Bull. 538); S. Rep. No. 734, 76th Cong., 1st Sess., p. 57 (1939-2 Cum. Bull. 565). As the court below stated (R. 54), the necessary implication of the new definition is that a "business league" is not exempt with respect to employees receiving more than \$45. No contention has been made that any of the petitioner's employees received less than that amount.

A definition of an "educational organization" identical to that set forth in Article 101 (6)-1

of Treasury Regulations 86, quoted above, was promulgated under Section 811 (b) (8) of the Social Security Act shortly after it was first enacted, and again shortly after the enactment of the Social Security Act Amendments of 1939. Article 12 of Treasury Regulations 91 (Appendix, *infra*); Article 402.215 of Treasury Regulations 106 (Appendix, *infra*). In the circumstances the validity of these Regulations is beyond question. *Helvering v. Winmill*, 305 U. S. 79; *Helvering v. Reynolds Co.*, 306 U. S. 110; *White v. Winchester Club*, 315 U. S. 32. The petitioner plainly cannot qualify under the definition set forth in the Regulations. It was not "designed primarily for the improvement or development of the capabilities of the individual." There are no "exceptional circumstances" entitling it to be classified as an "association whose sole purpose is the instruction of the public or an association whose primary purpose is to give lectures on subjects useful to the individual and beneficial to the community;" and in any event the petitioner cannot fit into either exceptional category. On the other hand, the petitioner falls squarely within the definition of a "business league" set forth in Article 101 (7)-1 of Treasury Regulations 86, quoted above, and in corresponding provisions of subsequent editions of the regulations.\* It has ob-

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\* Article 101 (7)-1 of Treasury Regulations 94 and 101; Section 19.101 (7)-1 of Treasury Regulations 103; Section 29.101 (7)-1 of Treasury Regulations 111.

tained exemption from income tax on the ground that it is a "business league." In the words of the court below (R. 45)—

\* \* \* to exempt Better Business Bureau would be to exempt nearly every trade association and chamber of commerce which is engaged in similar activities. And thus we would read back into the Social Security Act an exemption of business leagues which was omitted by Congress.

In *Jones v. Better Business Bureau of Oklahoma City*, 123 F. 2d 767, the Circuit Court of Appeals for the Tenth Circuit held that a corporation operated for purposes much like those of the present petitioner was entitled to exemption under Section 811 (b) (8) of the Social Security Act. The majority opinion held (p. 769) that the exemption should be "liberally construed" since its purpose was "to encourage religious, charitable, scientific, literary, and educational associations \* \* \*." From this it found warrant for taking the term "educational" purposes in its "broadest and best sense," and concluded that the taxpayer was exempt.

This approach obviously proves too much. As the court below pointed out (R. 45), similar programs are becoming part of the business activities of every industry. For purposes at least in substantial part commercial, non-profit organizations such as chambers of commerce, trade associations, and leagues of businesses ranging from the manu-

fracture of clay sewer pipe to the furnishing of air transportation carry on programs to "educate" the public. Doubtless the public does benefit from such programs, but this does not alter the fact that an important purpose of each is the furtherance of business interests. If all these organizations were exempt from the operation of the Social Security Act, that remedial statute would have a field of operation far more restricted than Congress even intended, as shown by the legislative history recited above.

Even in the absence of a specific legislative history, the decision in the *Better Business Bureau of Oklahoma City* case could not be justified on the ground that exemption provisions of the character here involved are to be construed liberally. Similar provisions are embodied in many different federal statutes dealing not only with taxes and the coverage of the social security legislation, but also with such other diverse subjects as the issuance of securities and the renegotiation of contracts. In general these statutes may be said to grant exemption from remedial statutes or to confer privileges from the sovereign. According to the usual canons of statutory construction they should therefore be construed strictly.\* In some situations, however, there has been a relaxation of

\* *Cornell v. Coyne*, 192 U. S. 418, 431-432; *Bowers v. Lawyers Mortgage Co.*, 285 U. S. 182, 186-187; *New Colonial Co. v. Helvering*, 292 U. S. 435, 440; *McDonald v. Thompson*, 305

the rigor of the normal rule of holding the taxpayer to the strict letter of an exemption provision. For example, it is common knowledge that religious organizations frequently obtain from investments part of the funds needed for their purposes, and that they normally have incidental activities which, although not strictly religious in character, serve to further their ultimate purposes. To give "exclusively" a strictly literal meaning in this situation would leave the exemption but little scope. Under the decision of this Court in the *Sagrada Orden* case, *supra*, such an organization is exempt, provided it does not carry on a business or engage in commercial competition with others. In other cases this Court has rejected technical arguments against the allowance of deductions claimed with respect to gifts made to organizations which obviously were organized and operated exclusively for exempt purposes. *Lederer v. Stockton*, 260 U. S. 3; *Hel-*

U. S. 263, 266; *Helvering v. Northwest Steel Mills*, 311 U. S. 46, 49; *Helvering v. Ohio Leather Co.*, 317 U. S. 102, 106.

For cases holding that statutes enacted in conformity to the federal social security laws should be construed liberally to achieve their beneficent purpose, and that exemptions must therefore be strictly construed, see *National Rifle Ass'n v. Young*, 134 F. 2d 524 (App. D. C.); *Consumers' Research v. Evans*, 128 N. J. L. 95; *Maine Unemployment Com. v. Androscoggin*, 137 Me. 154; *Matter of Mohawk Mills Assn.*, 260 App. Div. (N. Y.) 433; *Young v. Bureau of Unemployment Com.*, 63 Ga. App. 130; *Carroll v. Social Security Board*, 128 F. 2d 876 (C. C. A. 7th). But compare *Hassett v. Associated Hospital Service Corp.*, *supra*.



vering v. Bliss, 293 U. S. 144; *Old Colony Co. v. Commissioner*, 301 U. S. 379. We do not quarrel with liberal constructions of this character. They plainly afford no warrant, however, for expanding the meaning of "educational" beyond that normally attributed to it, or for exempting an organization because some of the means to achieve a commercial purpose might arguably be said to have educational aspects. The construction employed in the *Better Business Bureau of Oklahoma City* case could only serve to break down the carefully constructed categories of exempt purposes or functions established by Congress over a period of many years, and to confer exemptions on a scale far wider than Congress ever could have intended.

#### CONCLUSION

The decision below is correct and should be affirmed.

Respectfully submitted.

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✓ SAMUEL O. CLARK, JR.,  
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✓ SEWALL KEY,

✓ J. LOUIS MONARCH,

✓ JOSEPH S. PLATT,

*Special Assistants to the Attorney General.*

/ RALPH F. FUCHS,

JOHN COSTELLOE,

October 1945.

*Department of Justice.*

## APPENDIX

Social Security Act, c. 531, 49 Stat. 620:

SEC. 811. WHEN USED IN THIS TITLE—

(b) The term "employment" means any service, of whatever nature, performed within the United States by an employee for his employer, except—

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual. (42 U. S. C. 1011.)

Internal Revenue Code:

SEC. 1426. DEFINITIONS. WHEN USED IN THIS SUBCHAPTER—

(b) *Employment*.—The term "employment" means any service of whatever nature, performed within the United States by an employee for his employer, except—

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or ani-

mals, no part of the net earnings of which inures to the benefit of any private shareholder or individual; \* \* \* (26 U. S. C. 1426.)

Social Security Act Amendments of 1939, c. 666,  
53 Stat. 1360:

SEC. 606. Effective January 1, 1940, section 1426 of the Internal Revenue Code is amended to read as follows:

SEC. 1426. DEFINITIONS.

"When used in this subchapter—

"(b) *Employment*.—The term 'employment' means any service performed prior to January 1, 1940, which was employment as defined in this section prior to such date, and any service, of whatever nature, performed after December 31, 1939, by an employee for the person employing him, irrespective of the citizenship or residence of either, (A) within the United States, or (B) on or in connection with an American vessel under a contract of service which is entered into within the United States or during the performance of which the vessel touches at a port in the United States, if the employee is employed on and in connection with such vessel when outside the United States, except—

"(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private share-

holder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;" (26 U. S. C. 1426).

Treasury Regulations 91, promulgated under Title VIII of the Social Security Act:

**ART. 12. RELIGIOUS, CHARITABLE, SCIENTIFIC, LITERARY, AND EDUCATIONAL ORGANIZATIONS AND COMMUNITY CHESTS.**—Services performed by any employee of an organization of the class specified in section 811 (b) (8) are excepted.

For the purpose of the exception the nature of the service is immaterial; the statutory test is the character of the organization for which the service is performed.

In all cases, in order to establish its status under the statutory classification, the organization must meet two tests:

(1) It must be organized and operated exclusively for one or more of the specified purposes; and

(2) Its net income must not inure in whole or in part to the benefit of private shareholders or individuals.

\* \* \* \* \*

An educational organization within the meaning of section 811 (b) (8) of the Act is one designed primarily for the improvement or development of the capabilities of the individual, but, under exceptional circumstances, may include an association whose sole purpose is the instruction of the public, or an association whose primary purpose is to give lectures on subjects useful to the individual and beneficial to the community, even though an association of either class has incidental amusement fea-

tures. An organization formed, or availed of, to disseminate controversial or partisan propaganda or which by any substantial part of its activities attempts to influence legislation is not an educational organization within the meaning of section 811 (b) (8) of the Act.

The provisions of Section 402.215, Treasury Regulations 106, promulgated under the Federal Insurance Contributions Act (Sections 1400-1431 of the Internal Revenue Code) are substantially the same as those of Article 12, Treasury Regulations 91.



# SUPREME COURT OF THE UNITED STATES.

No. 52.—OCTOBER TERM, 1945.

Better Business Bureau of Wash- ington, D. C., Inc., Petitioner, vs. United States of America.	} On Writ of Certiorari to the United States Court of Appeals for the Dis- trict of Columbia.
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[November 13, 1945.]

Mr. Justice MURPHY delivered the opinion of the Court.

Here our consideration is directed to the question of whether the petitioner, the Better Business Bureau of Washington, D. C., Inc., is exempt from social security taxes as a corporation organized and operated exclusively for scientific or educational purposes within the meaning of Section 811(b)(8) of the Social Security Act.<sup>1</sup>

From the stipulated statement of facts it appears that petitioner was organized in 1920 as a non-profit corporation under the laws of the District of Columbia. It has no shares of stock and no part of its earnings inures to the benefit of any private shareholder or individual. Its officers are elected annually from its membership; they have merely nominal duties and are paid no salary. Only the managing director and a small number of employees are paid. Membership is open to "any person, firm, corporation or association interested in better business ethics" as may be elected by the board of trustees and pay "voluntary subscriptions" or dues.

The charter of petitioner states that "the object for which it is formed is for the mutual welfare, protection and improvement of

<sup>1</sup> 49 Stat. 620, 639, 42 U. S. C. § 1011(b): "The term 'employment' means any service, of whatever nature, performed within the United States by an employee for his employer, except—

"(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual."

An amendment to this definition, not here relevant, was added in 1939. The entire definition has been incorporated into Section 1426(b)(8) of the Internal Revenue Code.

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business methods among merchants and other persons engaged in any and all business or professions and occupations of every description whatsoever that deal directly or indirectly with the public at large, and for the educational and scientific advancements of business methods among persons, corporations or associations engaged in business in the District of Columbia so that the public can obtain a proper, clean, honest and fair treatment in its dealings or transactions with such merchants, tradesmen, corporations, associations or persons following a profession and at the same time protecting the interest of the latter classes of businesses to enable such as are engaged in the same to successfully and profitably conduct their business and for the further purpose of endeavoring to obtain the proper, just, fair and effective enforcement of the Act of Congress approved May 29th, 1916, otherwise known as 'An Act to prevent fraudulent advertising in the District of Columbia.' "

In carrying out its charter provisions, petitioner divides its work roughly into five subdivisions:

- (1) Prevention of fraud by informing and warning members and the general public of the plans and schemes of various types of swindlers.
- (2) Fighting fraud by bringing general and abstract fraudulent practices to the attention of the public.
- (3) Elevation of business standards by showing and convincing merchants that the application of "the doctrine of caveat emptor is not good business" and by showing and convincing them that misleading, advertising, extravagant claims and price comparisons are not good business.
- (4) Education of consumers to be intelligent buyers.
- (5) Cooperation with various governmental agencies interested in law enforcement.

Information which the petitioner compiles is available to anyone without charge and is communicated to the members and the public by means of the radio, newspapers, bulletins, meetings and interviews. This information is also exchanged with the approximately eighty-five other Better Business Bureaus in the United States.

After paying the social security taxes for the calendar years 1937 to 1941, inclusive, petitioner filed claims for refunds, which

were disallowed. This suit to recover the taxes paid was then filed by petitioner in the District Court, which granted a motion for summary judgment for the United States. The court below affirmed the judgment, 148 F. 2d 14; and we granted certiorari, the Tenth Circuit Court of Appeals having reached a contrary result in *Jones v. Better Business Bureau of Oklahoma City*, 123 F. 2d 767.

Petitioner claims that it qualifies as a corporation "organized and operated exclusively for . . . scientific . . . or educational purposes . . . no part of the net earnings of which inures to the benefit of any private shareholder or individual" within the meaning of Section 811(b)(8) of the Social Security Act and hence is exempt from payment of social security taxes. No serious assertion is made, however, that petitioner is devoted exclusively to scientific purposes. The basic contention is that all of its purposes and activities are directed toward the education of business men and the general public. Merchants are taught to conduct their businesses honestly, while consumers are taught to avoid being victimized and to purchase goods intelligently. We join with the courts below in rejecting this contention.

It has been urged that a liberal construction should be applied to this exemption from taxation under the Social Security Act in favor of religious, charitable and educational institutions. Cf. *Trinidad v. Sagrada Orden*, 263 U. S. 578; *Helvering v. Bliss*, 293 U. S. 144. But it is unnecessary to decide that issue here. Cf. *Hassett v. Associated Hospital Service Corporation*, 125 F. 2d 611 (C. C. A. 1). Even the most liberal of constructions does not mean that statutory words and phrases are to be given unusual or tortured meanings unjustified by legislative intent or that express limitations on such an exemption are to be ignored. Petitioner's contention, however, demands precisely that type of statutory treatment. Hence it cannot prevail.

In this instance, in order to fall within the claimed exemption, an organization must be devoted to educational purposes exclusively. This plainly means that the presence of a single non-educational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes. It thus becomes unnecessary to determine the correctness of the educational characterization of petitioner's

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operations, it being apparent beyond dispute that an important if not the primary pursuit of petitioner's organization is to promote not only an ethical but also a profitable business community. The exemption is therefore unavailable to petitioner.

The commercial hue permeating petitioner's organization is reflected in its corporate title and in the charter provisions dedicating petitioner to the promotion of the "mutual welfare, protection and improvement of business methods among merchants" and others and to the securing of the "educational and scientific advancements of business methods" so that merchants might "successfully and profitably conduct their business." Petitioner's activities are largely animated by this commercial purpose. Unethical business practices and fraudulent merchandising schemes are investigated, exposed and destroyed. Such efforts to cleanse the business system of dishonest practices are highly commendable and may even serve incidentally to educate certain persons. But they are directed fundamentally to ends other than that of education. Any claim that education is the sole aim of petitioner's organization is thereby destroyed. See *Better Business Bureau v. District Unemployment Compensation Board*, 34 A. 2d 614 (D. C. Mun. App.).

The legislative history of Section 811(b)(8) of the Social Security Act confirms the conclusion that petitioner is not exempt under that section. This provision was drawn almost verbatim from Section 101(6) of the Internal Revenue Code, dealing with exemptions from income taxation. And Congress has made it clear, from its committee reports, that it meant to include within Section 811(b)(8) only those organizations exempt from the income tax under Section 101(6).<sup>2</sup> Significantly, however, Congress did not write into the Social Security Act certain other exemptions embodied in the income tax provisions, especially the exemption in Section 101(7) of "business leagues, chambers of commerce, real-estate boards, or boards of trade." Petitioner closely resembles such organizations and has, indeed, secured an exemption from the income tax under Section 101(7) as a "busi-

<sup>2</sup> "The organizations which will be exempt from such [social security] taxes are churches, schools, colleges, and other educational institutions not operated for private profit, the Y. M. C. A., the Y. W. C. A., the Y. M. H. A., the Salvation Army, and other organizations which are exempt from income tax under section 101(6) of the Revenue Act of 1932." H. Rep. No. 615 (74th Cong., 1st Sess.) p. 33; S. Rep. No. 628 (74th Cong., 1st Sess.) p. 45.

ness-league."<sup>3</sup> Thus Congress has made, for income tax exemption purposes, an unmistakable demarcation between corporations organized and operated exclusively for educational purposes and those organizations in the nature of business leagues and the like. Its manifest desire to include only the former within the meaning of Section 811(b)(8) of the Social Security Act prevents us from construing the language of that section to include an organization like petitioner.

Moreover, in amending the Social Security Act in 1939, Congress created certain new exemptions by providing, *inter alia*, that an organization exempt from income taxes under any of the subdivisions of Section 101 of the Internal Revenue Code was also exempt from social security taxes as to those employees receiving no more than \$45 in a calendar quarter.<sup>4</sup> The Congressional committee reports referred specifically to "business leagues, chambers of commerce, real estate boards, [and] boards of trade" as being included among those organizations exempt from income taxes and affected by this new partial exemption from social security taxes.<sup>5</sup> The inescapable inference from this is that such organizations, of which petitioner is an example, remain subject to social security taxes as to higher paid employees. No contention has been made that any of petitioner's employees are within the low-paid category.

Finally, a Treasury regulation<sup>6</sup> defining an educational organization as "one designed primarily for the improvement or development of the capabilities of the individual" for purposes of Section 101(6) of the Internal Revenue Code was in effect at the time when Congress used that section in framing Section 811(b)(8) of the Social Security Act. An identical definition has been

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<sup>3</sup> Petitioner states that it was incorporated under the provision of the District of Columbia Code relating to educational and scientific institutions and it asserts that if it were another type of institution it would have been required to incorporate under some other Code provision. But petitioner's classification for incorporation purposes has no more relevance for purposes of exemption from social security taxes than it has for purposes of income tax exemption, as to which petitioner has been classified as a business league rather than as an educational or scientific institution.

<sup>4</sup> 53 Stat. 1360, 1374, 1384; 42 U. S. C. § 409(b)(10), 26 U. S. C. § 1426(b)(10).

<sup>5</sup> H. Rep. No. 728 (76th Cong., 1st Sess.) pp. 47-48; S. Rep. No. 734 (76th Cong., 1st Sess.) p. 57. Educational institutions of the type already exempt under Section 811(b)(8) were not mentioned in this respect.

<sup>6</sup> Article 101(6)-1 of Treasury Regulations 86.



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promulgated under Section 811(b)(8) and petitioner admittedly does not meet its terms.<sup>7</sup> Under the circumstances the administrative definition is "highly relevant and material evidence of the probable general understanding of the times and of the opinions of men who probably were active in the drafting of the statute." *White v. Winchester Club*, 315 U. S. 32, 41. It lends persuasive weight to the conclusion we have reached.

For the foregoing reasons the judgment of the court below is

*Affirmed.*

\* Mr. Justice JACKSON took no part in the consideration or decision of this case.

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<sup>7</sup> Article 12 of Treasury Regulations 91; Section 402.215 of Treasury Regulations 106. The definition further states that "under exceptional circumstances" an educational organization "may include an association whose sole purpose is the instruction of the public, or an association whose primary purpose is to give lectures on subjects useful to the individual and beneficial to the community, even though an association of either class has incidental amusement features." No "exceptional circumstances" are apparent in petitioner's case and, moreover, neither exceptional category fits the petitioner.